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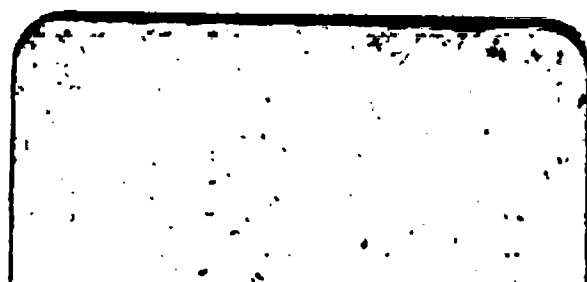
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INVESTIGATION OF TITLE.

BEING A

PRACTICAL TREATISE AND ALPHABETICAL DIGEST

OF THE LAW CONNECTED WITH THE TITLE TO LAND,

With Precedents of Requisitions.

BY

W. HOWLAND JACKSON,

of Lincoln's Inn,

AND

THOROLD GOSSET, B.A., LL.M.,

Of the Inner Temple,

BARRISTERS-AT-LAW.

"No one's misfortune is so much slighted by the Courts as his, who buys a thing in the realty and does not look into the title."—*Lord St. Leonards.*

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PREFACE.

AN attempt has been made in this work to collect in a concise and convenient form the law on various points which should be present to the mind of the conveyancer when investigating a title. It is hoped that the book will prove useful in obviating, during the perusal of abstracts, the distraction caused by reference to authorities which are not always easily available.

The writers have adopted the plan of adding to each subject in the Alphabetical Digest precedents of requisitions. Some of these relate to matters of such frequent occurrence that they may be regarded as common form, others may be found to suit points which actually arise, while all may, it is hoped, be of use in framing or suggesting requisitions where none of the forms given are applicable.

W. H. J.

T. G.

21, OLD SQUARE, LINCOLN'S INN,
October, 1898.

CONTENTS.

| | PAGE |
|--|-------|
| PREFACE | iii |
| TABLE OF AUTHORITIES REFERRED TO | vii |
| TABLE OF STATUTES REFERRED TO | xxvii |
| LIST OF ABBREVIATIONS IN REFERENCES TO TEXT BOOKS .. | xliv |

INTRODUCTORY.

| | |
|--|---|
| SYSTEM OF PERUSAL AND ANALYSIS OF ABSTRACTS OF TITLE | 1 |
| LIST OF USUAL SUBJECTS FOR REQUISITIONS COMMON TO VARIOUS KINDS OF PROPERTY | 3 |
| THE LIKE ADDITIONAL SUBJECTS PECULIAR TO FREEHOLDS . | 3 |
| THE LIKE ADDITIONAL SUBJECTS PECULIAR TO COPYHOLDS . | 4 |
| THE LIKE ADDITIONAL SUBJECTS PECULIAR TO LEASEHOLDS. | 4 |
| THE LIKE ADDITIONAL SUBJECTS PECULIAR TO SALES UNDER SETTLED LAND ACTS | 4 |
| THE LIKE ADDITIONAL SUBJECTS PECULIAR TO REVER- SIONARY INTERESTS | 4 |

| | |
|---------------------------|-------|
| ALPHABETICAL DIGEST | 5—359 |
|---------------------------|-------|

APPENDIX A.

| | PAGE |
|--|------|
| COMMON FORM AND MISCELLANEOUS REQUISITIONS | 361 |

APPENDIX B.

| | |
|---|-----|
| SPECIMEN ABSTRACT WITH ANALYSIS AND NOTES ON TITLE DISCLOSED, OPINION AND REQUISITIONS, REPLIES THERETO, AND FURTHER REQUISITIONS | 364 |
|---|-----|

APPENDIX C.

| | |
|---|-----|
| FORM OF STATUTORY DECLARATION AS TO IDENTITY OF PARCELS AND POSSESSION | 377 |
|---|-----|

APPENDIX D.

| | |
|--|-----|
| BOND OF INDEMNITY FROM VENDOR TO PURCHASER APPLI- CABLE TO CASES WHERE THE TITLE IS TOO SHORT AND WHERE THE TITLE DEEDS ARE LOST | 379 |
|--|-----|

APPENDIX E.

| | |
|--|-----|
| COSTS UNDER THE SOLICITORS' REMUNERATION ACT, 1881 | 381 |
|--|-----|

| | |
|---------------------------------|-----|
| INDEX TO REQUISITIONS | 393 |
| GENERAL INDEX | 411 |

AUTHORITIES REFERRED TO.

A.

| | PAGE |
|---|----------|
| Abbott, Re, Peacock <i>v.</i> Frigout, [1893] 1 Ch. 54; 62 L. J. Ch. 46; 67 L. T. 794; 41 W. R. 154; 3 R. 72 - - - - - | 249 |
| Aberdeen Railway Co. <i>v.</i> Blaikie Brothers, 23 L. T. 315; 2 Eq. Rep. 1281; 1 Macq. 461 - - - - - | 141 |
| Acherley <i>v.</i> Vernon, 3 Bro. P. C. 85; Com. 381; 9 Mod. 68; 10 Mod. 518; 1 P. W. 783; 2 Eq. Abr. 209- - - - - | 352, 353 |
| Adams <i>v.</i> Angell, 5 Ch. D. 634; 46 L. J. Ch. 352; 36 L. T. 334; 25 W. R. 139 - - - - - | 214 |
| Adsetts <i>v.</i> Hives, 9 L. T. 110; 11 W. R. 1092; 9 Jur. (N. S.) 1063; 2 N. R. 474; 33 Beav. 52 - - - - - | 100 |
| Agar <i>v.</i> Fairfax, 17 Ves. jun. 533; W. & T. 181 - - - - - | 245 |
| Aldous <i>v.</i> Cornwall, L. R. 3 Q. B. 573; 37 L. J. Q. B. 201; 16 W. R. 1045; 9 B. & S. 607 - - - - - | 100 |
| Aleyn <i>v.</i> Belchier, 1 Eden, 132; 2 W. & T. 308 - - - - - | 31 |
| Alison, Re, Johnson <i>v.</i> Mounsey, 11 Ch. D. 284; 40 L. T. 234; 27 W. R. 537 - - - - - | 252 |
| Allen, Re, 34 Ch. D. 433; 56 L. J. Ch. 487; 56 L. T. 6; 35 W. R. 218; 51 J. P. 325 - - - - - | 383 |
| Allen <i>v.</i> Allen, 2 D. & War. 307; 1 Con. & L. 427; 4 Ir. Eq. R. 472 - - - - - | 198 |
| Allen <i>v.</i> Jackson, 1 Ch. D. 399; 45 L. J. Ch. 310; 33 L. T. 713; 24 W. R. 306- - - - - | 208 |
| Amfield <i>v.</i> White, 27 R. R. 745; Ry. & M. 246 - - - - - | 258 |
| Anderson <i>v.</i> Pignet, L. R. 8 Ch. 180; 42 L. J. Ch. 310; 27 L. T. 740; 21 W. R. 150- - - - - | 318 |
| Arbib & Class's Contract, Re, [1891] 1 Ch. 601; 60 L. J. Ch. 263; 64 L. T. 217; 39 W. R. 305 - - - - - | 103 |
| Archbold <i>v.</i> Scully, 9 H. L. C. 360; 5 L. T. 160; 7 Jur. (N. S.) 1169 | 201 |
| Arnold, Re, Arnold <i>v.</i> Arnold, 14 Ch. D. 270; 42 L. T. 705; 28 W. R. 635 - - - - - | 59, 60 |
| Ashton <i>v.</i> Jones, 3 L. T. 49; 8 W. R. 633; 6 Jur. (N. S.) 970; 28 Beav. 460 - - - - - | 235 |
| Astbury <i>v.</i> Astbury, [1898] 2 Ch. 111; 67 L. J. Ch. 471; 78 L. T. 494; 46 W. R. 536 - - - - - | 201, 204 |
| Att.-Gen. <i>v.</i> Beech, [1898] 2 Q. B. 147; 67 L. J. Q. B. 585; 78 L. T. 584; 46 W. R. 435; 62 J. P. 371 - - - - - | 95 |
| Att.-Gen. <i>v.</i> Clarendon (Earl of), 17 Ves. jun. 491 - - - - - | 141 |
| Att.-Gen. <i>v.</i> Glyn, 12 Sim. 84 - - - - - | 235 |
| Att.-Gen. <i>v.</i> Morgan, [1891] 1 Ch. 432; 60 L. J. Ch. 126; 64 L. T. 403; 39 W. R. 324 - - - - - | 214 |
| Att.-Gen. <i>v.</i> Tomline, 5 Ch. D. 750; 46 L. J. Ch. 654; 36 L. T. 684; 25 W. R. 803 - - - - - | 215 |

| | PAGE |
|---|----------|
| Att.-Gen. <i>v.</i> Trustees of the London Parochial Charities, [1896] 1 Ch. 541; 65 L. J. Ch. 242; 74 L. T. 184; 44 W. R. 395 - | 47 |
| Austin <i>v.</i> Llewellyn, 23 L. J. Ex. 11; 9 Ex. 276; 2 C. L. R. 409 | 200 |
| Ayers <i>v.</i> South Australian Banking Company, L. R. 3 P. C. 548; 40 L. J. P. C. 22; 19 W. R. 860; 7 Moore, P. C. C. (N. S.) 432 | 56 |
| B. | |
| Baggs, Re, [1894] 2 Ch. 416 n.; 96 L. T. Journ. 198 - | 162, 293 |
| Bailey <i>v.</i> Barnes, [1894] 1 Ch. 25; 63 L. J. Ch. 73; 69 L. T. 542; 42 W. R. 66; 7 R. 9 - | 239 |
| Bailey <i>v.</i> Ekins, 7 Ves. jun. 319 - | 51 |
| Bain <i>v.</i> Fothergill, L. R. 7 H. L. 158; 43 L. J. Ex. 243; 31 L. T. 389; 23 W. R. 261 - | 323 |
| Bainbridge <i>v.</i> Ashburton (Lord), 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347 - | 218, 324 |
| Banister, Re, Broad <i>v.</i> Munton, 12 Ch. D. 131; 48 L. J. Ch. 837; 40 L. T. 828; 27 W. R. 826 - | 59 |
| Bankes <i>v.</i> Small, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765 - | 125, 302 |
| Banks <i>v.</i> Goodfellow, L. R. 5 Q. B. 549; 39 L. J. Q. B. 237; 22 L. T. 813 - | 159 |
| Banks <i>v.</i> Le Despencer, 9 L. J. Ch. 185; 4 Jur. 601; 11 Sim. 508 - | 123 |
| Barber's Settled Estates, Re, 18 Ch. D. 624; 50 L. J. Ch. 769; 45 L. T. 433; 29 W. R. 909 - | 198 |
| Barclay <i>v.</i> Raine, 24 R. R. 206; 1 Sim. & St. 449 - | 321 |
| Baring, Re, Jeune <i>v.</i> Baring, [1893] 1 Ch. 61; 62 L. J. Ch. 50; 67 L. T. 702; 41 W. R. 87; 3 R. 37 - | 183, 184 |
| Barker, Re, 17 Ch. D. 241; 50 L. J. Ch. 334; 44 L. T. 33; 29 W. R. 873 - | 162 |
| Barker <i>v.</i> Greenwood, 4 M. & W. 421 - | 354 |
| Barraclough <i>v.</i> Greenhough, L. R. 2 Q. B. 612; 36 L. J. Q. B. 251; 15 W. R. 934 - | 357 |
| Barrell, Ex parte, Re Parnell, L. R. 10 Ch. 512; 33 L. T. 115; 23 W. R. 846 - | 194 |
| Bartlett <i>v.</i> Wells, 31 L. J. Q. B. 57; 5 L. T. 607; 10 W. R. 229; 8 Jur. (N. S.) 762; 1 B. & S. 836 - | 132 |
| Baskcomb <i>v.</i> Beckwith, L. R. 8 Eq. 100; 38 L. J. Ch. 536; 20 L. T. 862; 17 W. R. 812 - | 243 |
| Bateman (Lady) <i>v.</i> Faber, [1898] 1 Ch. 144; 67 L. J. Ch. 130; 77 L. T. 576; 46 W. R. 215 - | 132 |
| Bawden, Re, Bawden <i>v.</i> Cresswell, [1894] 1 Ch. 693; 63 L. J. Ch. 412; 70 L. T. 526; 42 W. R. 235; 8 R. 76 - | 48 |
| Baylis <i>v.</i> Jiggins, [1898] 2 Q. B. 315; 67 L. J. Q. B. 793 - | 259 |
| Beall <i>v.</i> Smith, L. R. 9 Ch. 85; 43 L. J. Ch. 245; 29 L. T. 625; 22 W. R. 121 - | 162 |
| Beardman <i>v.</i> Wilson, L. R. 4 C. P. 57; 38 L. J. C. P. 91; 19 L. T. 282; 17 W. R. 54 - | 180 |
| Beaumont's Mortgage Trusts, Re, L. R. 12 Eq. 86; 40 L. J. Ch. 400; 19 W. R. 767 - | 215 |

AUTHORITIES REFERRED TO.

ix

| | PAGE |
|--|-------------|
| Beck, Re, Cartington Estate, Re, 24 Ch. D. 608; 52 L. J. Ch. 815; 49 L. T. 95; 31 W. R. 910 - - - - - | 386 |
| Beddington v. Atlee, 35 Ch. D. 317; 56 L. J. Ch. 655; 56 L. T. 514; 35 W. R. 799; 51 J. P. 484 - - - - - | 111 |
| Bedford v. Backhouse or Bacchus, 2 Eq. Abr. 615; Kelynge, 5 - | 262 |
| Bedford (Duke of) v. Trustees of British Museum, 2 L. J. Ch. 129; 2 My. & K. 552 - - - - - | 81, 83, 271 |
| Bedingfield & Herring, Re, [1893] 2 Ch. 332; 62 L. J. Ch. 430; 68 L. T. 634; 41 W. R. 413; 3 R. 483 - - - - - | 331 |
| Belaney v. Ffrench, L. R. 8 Ch. 918; 43 L. J. Ch. 312; 29 L. T. 706; 22 W. R. 177 - - - - - | 195 |
| Bellamy v. Debenham, [1891] 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257 - - - - - | 215, 323 |
| Berry v. Gibbons, Ex parte Lee, L. R. 15 Eq. 150; 42 L. J. Ch. 231 | 240 |
| Betts v. Great Eastern Railway Co., 3 Ex. D. 182; 47 L. J. Ex. 461 | 312 |
| Beyfus & Masters's Contract, Re, 39 Ch. D. 110; 59 L. T. 740; 37 W. R. 261; 53 J. P. 293 - - - - - | 181 |
| Biggs v. Peacock, 20 Ch. D. 200; 22 Ch. D. 284; 51 L. J. Ch. 555; 52 L. J. Ch. 1; 46 L. T. 582; 47 L. T. 341; 30 W. R. 605; 31 W. R. 148 - - - - - | 245, 332 |
| Birchall, Re, Birchall v. Ashton, 40 Ch. D. 436; 60 L. T. 369; 37 W. R. 387 - - - - - | 103 |
| Birmingham & District Land Co. and Allday, Re, [1893] 1 Ch. 342; 62 L. J. Ch. 90; 67 L. T. 850; 41 W. R. 189; 3 R. 84 - | 270 |
| Bird v. Johnson, 23 L. T. 320; 2 W. R. 692; 18 Jur. 976 - | 237 |
| Blair v. Cordner, 19 Q. B. D. 516; 56 L. J. Q. B. 642; 36 W. R. 109 | 382 |
| Board of Trade, Ex parte, Parker, Re, 15 Q. B. D. 196; 54 L. J. Q. B. 372; 52 L. T. 670; 33 W. R. 262 - - - - - | 34 |
| Boddington v. Robinson, L. R. 10 Ex. 270; 44 L. J. Ex. 223; 33 L. T. 364; 23 W. R. 295 - - - - - | 67 |
| Boden v. Hensby, [1892] 1 Ch. 101; 61 L. J. Ch. 147; 65 L. T. 744; 40 W. R. 205 - - - - - | 195 |
| Bolton v. London School Board, 7 Ch. D. 766; 47 L. J. Ch. 461; 38 L. T. 277; 26 W. R. 549 - - - - - | 191 |
| Booth v. Smith, 14 Q. B. D. 318; 54 L. J. Q. B. 119; 51 L. T. 742; 33 W. R. 142 - - - - - | 26, 33 |
| Boursot v. Savage, L. R. 2 Eq. 134; 14 L. T. 299; 14 W. R. 565 - | 335 |
| Bower v. Smith, L. R. 11 Eq. 279; 40 L. J. Ch. 194; 24 L. T. 118; 19 W. R. 399 - - - - - | 300 |
| Bowling & Welby's Contract, Re, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 417; 12 R. 218 - - - - - | 46, 241 |
| Bowman v. Hyland, 8 Ch. D. 588; 47 L. J. Ch. 581; 39 L. T. 90; 26 W. R. 877 - - - - - | 268 |
| Boyd v. Allen, 24 Ch. D. 622; 53 L. J. Ch. 701; 48 L. T. 628; 31 W. R. 544 - - - - - | 245 |
| Bradley v. Peixoto, 4 R. R. 7; 3 Ves. jun. 324; Tu. L. C. 514 - | 21 |
| Brall, Re, Norton, Ex parte, [1893] 2 Q. B. 381; 62 L. J. Q. B. 457; 69 L. T. 323; 41 W. R. 623; 5 R. 440; 10 Morrell, 166 - | 299 |
| Braybroke (Lord) v. Inskip, 7 R. R. 106; 8 Ves. jun. 417; Tu. L. C. 322 - - - - - | 218, 324 |

| | PAGE |
|---|------------|
| Brewer <i>v.</i> Broadwood, 22 Ch. D. 105; 52 L. J. Ch. 136; 47 L. T. 508; 31 W. R. 115 | - 323 |
| Brewer <i>v.</i> Brown, 28 Ch. D. 309; 54 L. J. Ch. 605 | - 244 |
| Bridewell Hospital <i>v.</i> Ward & Co., 62 L. J. Ch. 270; 68 L. T. 212; 3 R. 228 | - 114 |
| Bright <i>v.</i> Larcher, 28 L. J. Ch. 837; 7 W. R. 658; 5 Jur. (N. S.) 1233; 3 De G. & J. 148 | - 356 |
| Brook's Mortgage, Re, 25 W. R. 841 | - 219 |
| Brooks <i>v.</i> Keith, 4 L. T. 541; 9 W. R. 565; 7 Jur. (N. S.) 482; 1 Dr. & Sm. 462 | - 300 |
| Broomfield <i>v.</i> Williams, [1897] 1 Ch. 602; 66 L. J. Ch. 305; 76 L. T. 243; 45 W. R. 469 | - 67 |
| Browne <i>v.</i> Hammond, Johns. 210 | - 342 |
| Bryant & Barningham, Re, 44 Ch. D. 218; 59 L. J. Ch. 636; 63 L. T. 20; 38 W. R. 469 | - 331, 332 |
| Bryant <i>v.</i> Busk, 28 R. R. 1; 4 Russ. 1 | - 207 |
| Bryant <i>v.</i> Hancock & Co., Ltd., [1898] 1 Q. B. 716; 67 L. J. Q. B. 507; 78 L. T. 397; 46 W. R. 386; 62 J. P. 324 | - 180, 255 |
| Bryant, Powis & Bryant <i>v.</i> La Banque du Peuple, [1893] A. C. 170; 62 L. J. P. C. 68; 68 L. T. 546; 41 W. R. 600; 1 R. 336 | - 15 |
| Bulmer <i>v.</i> Hunter, L. R. 8 Eq. 46; 38 L. J. Ch. 543; 20 L. T. 942 | 297 |
| Butcher <i>v.</i> Butcher, 14 Beav. 222 | - 300 |

C.

| | |
|---|---------------|
| Cahen, Ex parte, Cahen, Re, 10 Ch. D. 183; 39 L. T. 645; 27 W. R. 387 | 161 |
| Campbell's Policies, Re, 6 Ch. D. 686; 46 L. J. Ch. 142; 25 W. R. 268 | 299 |
| Capital Fire Insurance Association, Re, 24 Ch. D. 408; 53 L. J. Ch. 71; 49 L. T. 697; 32 W. R. 260 | - 195 |
| Cardross, Re, 7 Ch. D. 728; 47 L. J. Ch. 327; 38 L. T. 778; 26 W. R. 389 | - 157 |
| Carter & Kenderdine's Contract, Re, [1897] 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484 | - 35, 62, 299 |
| Catt's Trusts, Re, 33 L. J. Ch. 495; 10 L. T. 409; 12 W. R. 739; 10 Jur. (N. S.) 536; 4 N. R. 88; 2 H. & M. 46 | - 237 |
| Chapman & Hobbs, Re, 29 Ch. D. 1007; 54 L. J. Ch. 810; 52 L. T. 805; 33 W. R. 703 | - 186 |
| Christie & Ovington, 1 Ch. D. 279; 24 W. R. 204 | - 324 |
| Chudleigh's Case, 1 Rep. 120a | - 136 |
| Church <i>v.</i> Mundy, 15 Ves. jun. 396 | - 352 |
| Citizens' Bank of Louisiana <i>v.</i> First National Bank of New Orleans, L. R. 6 H. L. 353; 43 L. J. Ch. 269; 22 W. R. 194 | - 131 |
| Clay & Tetley, Re, 16 Ch. D. 3; 50 L. J. Ch. 164; 43 L. T. 402; 29 W. R. 5 | - 50 |
| Clayton & Barclay's Contract, Re, [1895] 2 Ch. 212; 64 L. J. Ch. 615; 72 L. T. 764; 43 W. R. 549; 59 J. P. 489; 13 R. 556 | - 37 |
| Clayton <i>v.</i> Leech, 41 Ch. D. 103; 61 L. T. 69; 37 W. R. 663 | - 268 |
| Cleare <i>v.</i> Cleare, L. R. 1 P. & D. 655; 38 L. J. P. 81; 20 L. T. 497; 17 W. R. 687 | - 350 |

AUTHORITIES REFERRED TO.

xi

| | PAGE |
|---|--------------|
| Clegg v. Hands, 44 Ch. D. 503; 59 L. J. Ch. 477; 62 L. T. 502; 38 W. R. 433 - - - - - | 254 |
| Cohen v. Mitchell, 25 Q. B. D. 262; 59 L. J. Q. B. 409; 63 L. T. 206; 38 W. R. 551; 7 Morrell, 207 - - - - - | 37 |
| Cole v. Sewell, 17 Sim. 40 - - - - - | 346 |
| Coleman & Jarrom, Re, 4 Ch. D. 165; 46 L. J. Ch. 33; 35 L. T. 614; 25 W. R. 137 - - - - - | 352 |
| Collins v. Castle, 36 Ch. D. 243; 57 L. J. Ch. 76; 57 L. T. 764; 36 W. R. 300 - - - - - | 269 |
| Collis v. Laughner, [1894] 3 Ch. 659; 63 L. J. Ch. 851; 71 L. T. 226; 43 W. R. 202; 8 R. 760 - - - - - | 113 |
| Columbine v. Penhall, 1 W. R. 272; 1 Sm. & G. 228 - - - - - | 297 |
| Compton v. Bagley, [1892] 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706 - - - - - | 5, 58 |
| Conron v. Conron, 7 H. L. C. 168 - - - - - | 48, 134, 356 |
| Cooch v. Goodman, 2 Q. B. 580; 6 Jur. 779; 2 G. & D. 159 - - - - - | 100 |
| Cook v. Cook, 2 Vern. 545 - - - - - | 169 |
| Cook v. Dawson, 30 L. J. Ch. 359; 4 L. T. 326; 9 W. R. 434; 3 De G. F. & J. 127 - - - - - | 48, 355 |
| Cooper, Re, Cooper v. Vesey, 20 Ch. D. 611; 51 L. J. Ch. 862; 47 L. T. 89; 30 W. R. 648 - - - - - | 68 |
| Cooper v. France, 19 L. J. Ch. 313; 14 Jur. 214 - - - - - | 71 |
| Cooper v. Kynock, L. R. 7 Ch. 398; 41 L. J. Ch. 296; 26 L. T. 566; 20 W. R. 503 - - - - - | 336, 338 |
| Cope, Re, Cope v. Cope, 16 Ch. D. 49; 50 L. J. Ch. 13; 43 L. T. 566; 29 W. R. 98 - - - - - | 182 |
| Corser v. Cartwright, L. R. 7 H. L. 731; 45 L. J. Ch. 605 - - - - - | 133 |
| Cottee v. Richardson, 7 Ex. 143 - - - - - | 180 |
| Courtier, Re, Coles v. Courtier, Courtier v. Coles, 34 Ch. D. 136; 56 L. J. Ch. 350; 55 L. T. 574; 35 W. R. 85; 51 J. P. 117 - - - - - | 183, 184 |
| Cousins' Trusts, Re, 31 Ch. D. 671; 55 L. J. Ch. 662; 54 L. T. 376; 34 W. R. 393 - - - - - | 239 |
| Cox & Neve's Contract, Re, [1891] 2 Ch. 109; 64 L. T. 733; 39 W. R. 412 - - - - - | 57, 191 |
| Croft v. Lumley, 6 H. L. C. 672; 27 L. J. Q. B. 321; 6 W. R. 523; 4 Jur. (N. S.) 903 - - - - - | 181 |
| Crozier v. Crozier, 3 D. & War. 353; 2 Con. & L. 309; 5 Ir. Eq. R. 415 - - - - - | 168 |
| Crusoe d. Blencowe v. Bugby, 3 Wils. 234; 2 Bla. W. 766 - - - - - | 180 |
| Culverhouse, Re, Cook v. Culverhouse, [1896] 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347; 45 W. R. 10 - - - - - | 94 |
| Cunliffe v. Brancker, 3 Ch. D. 393; 46 L. J. Ch. 128; 35 L. T. 578 - - - - - | 338 |
| Curtis v. Daniel, 10 East, 273 - - - - - | 215 |

D.

| | |
|---|---------|
| Dalton v. Angus, 6 App. Ca. 740; 50 L. J. Q. B. 689; 44 L. T. 484; 30 W. R. 191; 46 J. P. 132 - - - - - | 114 |
| D'Angibau, Re, Andrews v. Andrews, 15 Ch. D. 228; 49 L. J. Ch. 756; 43 L. T. 135; 28 W. R. 930 - - - - - | 31, 157 |

| | PAGE |
|---|----------|
| D'Arcy to White, 31 L. R. Ir. 142 - - - - - | 385 |
| Darlington <i>v.</i> Hamilton, 23 L. J. Ch. 1000; 2 Eq. Rep. 906; Kay, 550 | 58 |
| Davenport <i>v.</i> Hanbury, 3 R. R. 91; 3 Ves. jun. 257 - - - | 167 |
| Davies <i>v.</i> Thomas, 2 Y. & C. Ex. 234; 1 L. J. Ex. Eq. 21 - - | 194 |
| Davis, Re, Evans <i>v.</i> Moore, [1891] 3 Ch. 119; 61 L. J. Ch. 85; 65 L. T. 128; 39 W. R. 627 - - - - - | 204 |
| Davis' Case, Re Durham County Land and Building Society, L. R. 12 Eq. 516; 41 L. J. Ch. 124; 25 L. T. 83 - - - - | 45 |
| Davis <i>v.</i> Freethy, 24 Q. B. D. 519; 59 L. J. Q. B. 318 - - - | 381 |
| De Beauvoir <i>v.</i> Owen, 5 Ex. 166; 19 L. J. Ex. 177 - - - | 204 |
| Dench <i>v.</i> Dench, 2 P. D. 60; 46 L. J. P. 13; 25 W. R. 414 - - | 357 |
| Detmold, Re, Detmold <i>v.</i> Detmold, 40 Ch. D. 585; 58 L. J. Ch. 495; 61 L. T. 21; 37 W. R. 442 - - - - - | 22 |
| Devisme <i>v.</i> Mello, 1 B. C. C. 537 - - - - - | 342 |
| D'Eyncourt <i>v.</i> Gregory, 1 Ch. D. 441; 45 L. J. Ch. 205; 24 W. R. 424 - - - - - | 237 |
| Dicker <i>v.</i> Angerstein, 3 Ch. D. 600; 45 L. J. Ch. 754; 24 W. R. 844 - - - - - | 223, 375 |
| Dinn <i>v.</i> Grant, 5 De G. & S. 451 - - - - - | 194 |
| Dixon, Re, Byram <i>v.</i> Tull, 42 Ch. D. 306; 61 L. T. 718; 38 W. R. 91 | 315 |
| Doe d. Angell <i>v.</i> Angell, 9 Q. B. 328 - - - - - | 201 |
| Doe d. Gorges <i>v.</i> Webb, 9 R. R. 754; 1 Taunt. 234 - - - | 122 |
| Doe d. Leicester <i>v.</i> Biggs, 11 R. R. 533; 2 Taunt. 109 - - - | 354 |
| Doe d. Player <i>v.</i> Nicholls, 25 R. R. 398; 1 L. J. (O. S.) K. B. 124; 2 Dowl. & Ry. 480; 1 B. & C. 336 - - - - - | 354 |
| Doe d. Rigge <i>v.</i> Bell, 2 R. R. 642; 5 T. R. 471; 2 Sm. L. C. 116 - | 179 |
| Doe d. Rogers <i>v.</i> Brooks, 3 Ad. & E. 513 - - - - - | 206 |
| Doe d. Tatum <i>v.</i> Catomore, 16 Q. B. 745 - - - - - | 100 |
| Drummond <i>v.</i> Parish, 3 Curt. 522 - - - - - | 348 |
| Duddell <i>v.</i> Simpson, L. R. 2 Ch. 102; 36 L. J. Ch. 70; 15 L. T. 305; 15 W. R. 115 - - - - - | 268 |
| Dugdale <i>v.</i> Meadows, L. R. 6 Ch. 501; 40 L. J. Ch. 140; 24 L. T. 113 | 90 |
| Dunhill <i>v.</i> North-Eastern Railway Co, [1896] 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231; 60 J. P. 228 - - - | 312 |
| Duthy & Jesson's Contract, Re, [1898] 1 Ch. 419; 67 L. J. Ch. 218; 78 L. T. 223; 46 W. R. 300 - - - - - | 322 |

E.

| | |
|---|------------|
| Earnshaw-Wall, Re, [1894] 3 Ch. 156; 63 L. J. Ch. 836; 71 L. T. 173; 42 W. R. 567; 8 R. 558 - - - - - | 385 |
| East India Co. <i>v.</i> Henchman, 1 Ves. jun. 287 - - - - - | 141 |
| East London Waterworks Co. <i>v.</i> Kellerman, [1892] 2 Q. B. 72; 67 L. T. 319; 56 J. P. 773 - - - - - | 258 |
| Ebsworth & Tidy's Contract, Re, 42 Ch. D. 23; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199 - - - | 5, 56, 319 |

AUTHORITIES REFERRED TO.

xiii

| | PAGE |
|--|--------------|
| Ecclesiastical Commissioners & New City of London Brewery Co., Re, [1895] 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. 481; 43 W. R. 457; 13 R. 409 - - - - - | 47 |
| Edwards, Re, L. R. 9 Ch. 97; 43 L. J. Ch. 265; 29 L. T. 712; 22 W. R. 144 - - - - - | 299 |
| Edwards, Re, M'Neile v. Chambers, 10 Ch. D. 605; 48 L. J. Ch. 233; 40 L. T. 113; 27 W. R. 611 - - - - - | 162 |
| Edwards v. Carter, [1893] A. C. 360; 63 L. J. Ch. 100; 69 L. T. 153; 58 J. P. 4; 1 R. 218 - - - - - | 300 |
| Edwards v. McLeay, 14 R. R. 261; G. Coop. 312; 2 Sw. 287 - - - | 267 |
| Egg v. Blayney, 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. 65; 36 W. R. 893; 52 J. P. 517 - - - - - | 311 |
| Elliot v. Merriman, Barn. Ch. 78; 2 W. & T. 896 - - - - - | 334 |
| Elliott v. Ince, 26 L. J. Ch. 821; 30 L. T. (O. S.) 92; 5 W. R. 465; 3 Jur. (N. S.) 597; 7 De G. M. & G. 475 - - - - - | 159 |
| Ellis v. Rogers, 29 Ch. D. 661; 53 L. T. 377 - - - - - | 81, 271 |
| Emanuel & Simmonds, Re, 33 Ch. D. 40; 55 L. J. Ch. 710; 55 L. T. 79; 34 W. R. 613; 51 J. P. 22 - - - - - | 388 |
| Emmerton, Re, Maskell v. Farrington, 7 L. T. 301; 11 W. R. 127; 8 Jur. (N. S.) 1198; 1 N. R. 37 - - - - - | 48, 134, 356 |
| English and Scottish Mercantile Investment Trust v. Brunton, [1892] 2 Q. B. 700; 67 L. T. 406; 41 W. R. 133 - - - - - | 66 |
| Ettricke v. Ettricke, Amb. 656 - - - - - | 317 |
| Evans v. Rosser, 2 H. & M. 190- - - - - | 208 |
| Evans v. Williams, 11 L. T. 762; 13 W. R. 423; 11 Jur. (N. S.) 256; 2 Drew. & Sm. 324 - - - - - | 172 |
| Eyre, Re, Eyre v. Eyre, 49 L. T. 259; W. N. (1883) 153 - - - | 31 |

F.

| | |
|---|---------------|
| Farley v. Bonham, 30 L. J. Ch. 239; 3 L. T. 806; 9 W. R. 299; 7 Jur. (N. S.) 232; 2 J. & H. 177 - - - - - | 150 |
| Fearnside v. Flint, 22 Ch. D. 579; 52 L. J. Ch. 479; 48 L. T. 154; 31 W. R. 318 - - - - - | 202 |
| Field, Re, 29 Ch. D. 608; 54 L. J. Ch. 661; 52 L. T. 480; 33 W. R. 553; 49 J. P. 613 - - - - - | 382 |
| Fitzgerald v. Chapman, 1 Ch. D. 563; 45 L. J. Ch. 23; 33 L. T. 587; 24 W. R. 130 - - - - - | 106 |
| Fleming v. Hardcastle, 52 L. T. 851; 33 W. R. 776; W. N. (1885) 106 - - - - - | 382 |
| Fletcher v. Bird, Fisher on Mortgages, 5th ed., paragraph 2060 - | 261 |
| Flight v. Thomas, 5 Jur. 811; 8 Cl. & F. 231; West, 671; 11 Ad. & E. 688 - - - - - | 113 |
| Ford v. Ford, 6 Ha. 486 - - - - - | 352 |
| Ford & Hill, Re, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371 - - - - - | 280, 363, 375 |
| Forster v. Hale, 4 R. R. 128; 5 Ves. jun. 308 - - - - - | 126 |

| | PAGE |
|--|----------|
| Fortescue <i>v.</i> Mercantile Bank of London, [1897] 2 Q. B. 236 ; 66 L. J. Q. B. 591 ; 76 L. T. 645 ; 45 W. R. 529 - - - | 387 |
| Fox <i>v.</i> Mackreth, 2 R. R. 55 ; 4 Bro. P. C. 258 ; 2 B. C. C. 400 ; 2 Cox, 320 ; 2 W. & T. 709 - - - - - | 140 |
| Frail <i>v.</i> Ellis, 22 L. J. Ch. 467 ; 20 L. T. (O. S.) 197 ; 1 W. R. 72 ; 16 Beav. 350 - - - - - | 194 |
| Frampton <i>v.</i> Stephens, 21 Ch. D. 164 ; 51 L. J. Ch. 562 ; 46 L. T. 617 ; 30 W. R. 726 - - - - - | 107, 109 |
| Francis <i>v.</i> Clemow, 23 L. J. Ch. 288 ; 23 L. T. (O. S.) 57 ; 2 W. R. 308 ; 18 Jur. 223 ; Kay, 435 ; 2 Eq. R. 426 - - - - - | 356 |
| Frape, Re, Perrett, Ex parte, [1893] 2 Ch. 284 ; 62 L. J. Ch. 473 ; 68 L. T. 558 ; 41 W. R. 417 ; 2 R. 411 - - - - - | 381 |
| Frend <i>v.</i> Buckley, L. R. 5 Q. B. 213 ; 39 L. J. Q. B. 90 ; 22 L. T. 170 ; 18 W. R. 680 ; 10 B. & S. 973 - - - - - | 191 |
| Frost, Re, Frost <i>v.</i> Frost, 43 Ch. D. 246 ; 59 L. J. Ch. 118 ; 62 L. T. 25 ; 38 W. R. 264 - - - - - | 249 |

G.

| | |
|--|--------------|
| Games <i>v.</i> Bonner, 54 L. J. Ch. 517 ; 33 W. R. 64 - - - | 189, 199 |
| Garland <i>v.</i> Mead, L. R. 6 Q. B. 441 ; 40 L. J. Q. B. 179 ; 24 L. T. 421 ; 19 W. R. 1156 - - - - - | 73, 325 |
| Gartside <i>v.</i> Silkstone and Dodsworth Coal and Iron Co., 21 Ch. D. 762 ; 51 L. J. Ch. 828 ; 47 L. T. 76 ; 31 W. R. 36 - - - | 85 |
| General Auction Estate and Monetary Co. <i>v.</i> Smith, [1891] 3 Ch. 432 ; 60 L. J. Ch. 723 ; 65 L. T. 188 ; 40 W. R. 106 - - - | 98 |
| General Finance, Mortgage and Discount Co. <i>v.</i> Liberator Permanent Building Society, 10 Ch. D. 15 ; 39 L. T. 600 ; 27 W. R. 210 | 132 |
| Gillett <i>v.</i> Abbott, 2 Jur. 300 ; 7 Ad. & E. 783 ; 3 N. & P. 24 ; 1 W. W. & H. 89 - - - - - | 206 |
| Gloag & Miller's Contract, Re, 23 Ch. D. 320 ; 52 L. J. Ch. 654 ; 48 L. T. 629 ; 31 W. R. 601 - - - - - | 58, 82, 112 |
| Goodall <i>v.</i> Skerratt, 24 L. J. Ch. 323 ; 23 L. T. (O. S.) 6 ; 3 W. R. 152 ; 1 Jur. (N. S.) 57 ; 3 Eq. Rep. 295 ; 3 Drew. 216 - - - | 124 |
| Goodright d. Walter <i>v.</i> Davids, Cowp. 805 - - - - - | 181 |
| Goodtitle <i>v.</i> Meredith, 2 M. & Sel. 5 - - - - - | 353 |
| Gosling <i>v.</i> Woolf, [1893] 1 Q. B. 39 ; 68 L. T. 89 ; 41 W. R. 106 ; 5 R. 81 - - - - - | 192 |
| Gould <i>v.</i> Lakes, 6 P. D. 1 ; 49 L. J. P. 59 ; 43 L. T. 382 ; 29 W. R. 155 ; 44 J. P. 698 - - - - - | 357 |
| Governments Stock and other Securities Investment Co. Ltd. <i>v.</i> Manila Railway Co. Ltd., [1897] A. C. 81 ; 66 L. J. Ch. 102 ; 75 L. T. 553 ; 45 W. R. 353 - - - - - | 98 |
| Graves <i>v.</i> Graves, 8 Sim. 43 - - - - - | 48, 355 |
| Greaves <i>v.</i> Tofield, 14 Ch. D. 563 ; 50 L. J. Ch. 118 ; 43 L. T. 100 ; 28 W. R. 840 - - - - - | 27 |
| Greaves <i>v.</i> Wilson, 28 L. J. Ch. 103 ; 4 Jur. (N. S.) 802 ; 25 Beav. 434 - - - - - | 278 |
| Greville <i>v.</i> Brown, 34 L. T. (O. S.) 8 ; 7 W. R. 673 ; 5 Jur. (N. S.) 849 ; 7 H. L. C. 689 - - - - - | 48, 134, 356 |
| Griffiths <i>v.</i> Vere, 9 Ves. jun. 127 - - - - - | 250 |

H.

| | PAGE |
|--|--------------|
| Haines v. Guthrie, 13 Q. B. D. 818; 53 L. J. Q. B. 521; 51 L. T. 645; 33 W. R. 99; 48 J. P. 756 - - - - - | 14 |
| Halifax Joint Stock Banking Co. v. Gledhill, [1891] 1 Ch. 31; 60 L. J. Ch. 181; 63 L. T. 623; 39 W. R. 104 - - - - - | 297 |
| Hall & Co., Ltd., Re, 37 Ch. D. 712; 57 L. J. Ch. 288; 58 L. T. 156 | 239 |
| Hall v. Smith, 9 R. R. 313; 14 Ves. jun. 426 - - - - - | 82 |
| Hall-Dare's Contract, Re, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556 - - - - - | 8, 241, 346 |
| Hanson v. Keating, 14 L. J. Ch. 13; 8 Jur. 949; 4 Ha. 1 - - - - - | 210 |
| Harkness & Allsopp's Contract, Re, [1896] 2 Ch. 358; 65 L. J. Ch. 726; 74 L. T. 652; 44 W. R. 683 - - - - - | 103, 212 |
| Harman & Uxbridge and Rickmansworth Railway Co., Re, 24 Ch. D. 720; 52 L. J. Ch. 808; 49 L. T. 130; 31 W. R. 857 - - - - - | 66, 225 |
| Harvey v. Aston, 1 Atk. 361 - - - - - | 208 |
| Harvey v. Phillips, 2 Atk. 541 - - - - - | 206 |
| Hassard v. Smith, 6 Ir. Eq. R. 429 - - - - - | 159 |
| Haughton v. Haughton, 1 Moll. 611 - - - - - | 208 |
| Hawkes, Re, Ackerman v. Lockhart, [1898] 2 Ch. 1; 67 L. J. Ch. 284; 73 L. T. 336; 46 W. R. 445 - - - - - | 195 |
| Hawkesley v. Gowan, 11 L. T. 134; 12 W. R. 1100 - - - - - | 105 |
| Hawkins v. Kemp, 3 East, 410 - - - - - | 50 |
| Hayes, Re, 2 Curt. 338 - - - - - | 348 |
| Haywood v. Brunswick Permanent Building Society, 8 Q. B. D. 403; 51 L. J. Q. B. 73; 45 L. T. 699; 30 W. R. 299; 46 J. P. 356 - - - - - | 81, 269 |
| Heath v. Weston, 3 De G. M. & G. 601 - - - - - | 48 |
| Hebblethwaite v. Peever, [1892] 1 Q. B. 124; 40 W. R. 318 - - - - - | 204 |
| Henvell v. Whitaker, 3 Russ. 343 - - - - - | 48, 134, 355 |
| Herbert v. Herbert, Deane, Ecc. Ca. 10 - - - - - | 348 |
| Hester v. Hester, 34 Ch. D. 607; 56 L. J. Ch. 247; 55 L. T. 862; 35 W. R. 233; 51 J. P. 438 - - - - - | 383 |
| Hetling & Merton's Contract, Re, [1893] 3 Ch. 269; 62 L. J. Ch. 783; 69 L. T. 266; 42 W. R. 19; 2 R. 543 - - - - - | 15 |
| Hewitt v. Loosemore, 21 L. J. Ch. 69; 6 W. R. 637; 9 Ha. 449 - - - - - | 129 |
| Heywood v. Mallalieu, 25 Ch. D. 357; 53 L. J. Ch. 492; 49 L. T. 658; 32 W. R. 538 - - - - - | 111 |
| Hiatt v. Hillman, 25 L. T. 55; 19 W. R. 694 - - - - - | 226 |
| Higgins & Hitchman's Contract, Re, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; 46 J. P. 805 - - - - - | 81, 271 |
| Higginson v. Clowes, 10 R. R. 112; 15 Ves. jun. 516 - - - - - | 243 |
| Higinbotham v. Holme, 12 R. R. 146; 19 Ves. jun. 88 - - - - - | 22 |
| Hill, Re, 1 Rob. E. 276 - - - - - | 348 |
| Hill v. Cooper, [1893] 2 Q. B. 85; 62 L. J. Q. B. 423; 69 L. T. 216; 41 W. R. 500; 57 J. P. 663; 4 R. 418 - - - - - | 175 |
| Hill v. Lane, L. R. 11 Eq. 215; 40 L. J. Ch. 41; 23 L. T. 547; 19 W. R. 194 - - - - - | 243 |

| | PAGE |
|---|---------------|
| Hindmarch, In the Goods of, L. R. 1 P. & D. 307 ; 36 L. J. P. & M. 24 ; 15 L. T. 391 - - - - - | 356 |
| Hipwell v. Knight, 4 L. J. Ex. Eq. 52 ; 1 Y. & C. Ex. 401 - - | 58 |
| Hobbs v. Midland Railway Co., 20 Ch. D. 418 ; 51 L. J. Ch. 320 ; 46 L. T. 270 ; 30 W. R. 516 - - - - - | 312 |
| Hodson & Howe's Contract, Re, 35 Ch. D. 668 ; 56 L. J. Ch. 755 ; 56 L. T. 837 ; 35 W. R. 553 - - - - - | 129, 190, 226 |
| Hope v. Hope, [1892] 2 Ch. 336 ; 61 L. J. Ch. 441 ; 66 L. T. 522 ; 40 W. R. 522 - - - - - | 83 |
| Horn & Francis, Re, [1896] 2 Ch. 797 ; 66 L. J. Ch. 15 ; 75 L. T. 370 ; 45 W. R. 72 - - - - - | 390 |
| Horn's Settled Estates, Re, 29 L. T. 830 - - - - - | 296 |
| Horsford, In the Goods of, L. R. 3 P. & D. 211 ; 44 L. J. P. & M. 9 ; 31 L. T. 553 ; 23 W. R. 211 - - - - - | 356 |
| Horton v. Hall, L. R. 17 Eq. 437 ; 22 W. R. 391 - - - - - | 25 |
| Hosking v. Smith, 13 App. Ca. 582 ; 58 L. J. Ch. 367 ; 59 L. T. 565 ; 37 W. R. 257 - - - - - | 44 |
| Howe (Earl of) v. Litchfield (Earl of), L. R. 2 Ch. 155 ; 36 L. J. Ch. 313 ; 16 L. T. 436 ; 15 W. R. 323 - - - - - | 89, 90 |
| Hume, Re, Forbes v. Hume, [1895] 1 Ch. 422 ; 64 L. J. Ch. 267 ; 72 L. T. 68 ; 43 W. R. 291 ; 12 R. 101 - - - - - | 235 |
| Hurst v. Hurst, 21 Ch. D. 278 ; 51 L. J. Ch. 729 ; 46 L. T. 899 ; 31 W. R. 327 - - - - - | 103 |
| Hyde v. Warden, 3 Ex. D. 72 ; 47 L. J. Ex. 121 ; 37 L. T. 567 ; 26 W. R. 201 - - - - - | 82 |

I.

| | |
|---|-----|
| Imperial Mercantile Credit Association (Liquidators of) v. Coleman, L. R. 6 H. L. 189 ; 42 L. J. Ch. 644 ; 29 L. T. 1 ; 21 W. R. 696 | 141 |
| Imray v. Oakshette, [1897] 2 Q. B. 218 ; 66 L. J. Q. B. 544 ; 76 L. T. 632 ; 45 W. R. 681 - - - - - | 192 |
| Isaacs v. Towell, [1898] 2 Ch. 285 ; 67 L. J. Ch. 508 ; 78 L. T. 619 | 268 |

J.

| | |
|--|----------|
| Jackson, Re, Smith v. Sibthorpe, 34 Ch. D. 732 ; 56 L. J. Ch. 593 ; 56 L. T. 562 ; 35 W. R. 646 - - - - - | 170, 225 |
| Jackson & Oakshott, Re, 14 Ch. D. 851 ; 49 L. J. Ch. 523 ; 28 W. R. 794 - - - - - | 60 |
| Jacomb v. Turner, [1892] 1 Q. B. 47 - - - - - | 156, 275 |
| Jacubs v. Rylance, L. R. 17 Eq. 341 ; 43 L. J. Ch. 280 - - - - - | 194 |
| James v. Dean, 8 R. R. 178 ; 15 Ves. jun. 236 - - - - - | 353 |
| James v. Lichfield, L. R. 9 Eq. 51 ; 39 L. J. Ch. 248 - - - - - | 20 |
| Jay v. Johnstone, [1893] 1 Q. B. 189 ; 62 L. J. Q. B. 126 ; 68 L. T. 129 ; 41 W. R. 161 ; 57 J. P. 309 ; 4 R. 196 - - - - - | 173, 204 |
| Jenkins v. Young, Cro. Car. 230 - - - - - | 337 |
| Jenner v. Turner, 16 Ch. D. 188 ; 50 L. J. Ch. 161 ; 43 L. T. 468 ; 29 W. R. 99 - - - - - | 208 |

AUTHORITIES REFERRED TO.

xvii

| | PAGE |
|---|-------|
| Johnson & Tustin, Re, 30 Ch. D. 42; 54 L. J. Ch. 889; 53 L. T. 281; 33 W. R. 737 | - 341 |
| Johnson v. Johnson, 35 Ch. D. 345; 56 L. J. Ch. 326; 56 L. T. 163; 35 W. R. 329 | - 211 |
| Jolly v. Handcock, 7 Ex. 820; 22 L. J. Ex. 38; 16 Jur. 550 | - 6 |
| Jones v. Gibbons, 7 R. R. 247; 9 Ves. jun. 407 | - 224 |
| Jones v. Jones, 13 Sim. 561 | - 208 |
| Jupp, Re, Jupp v. Buckwell, 39 Ch. D. 148; 57 L. J. Ch. 774; 59 L. T. 129; 36 W. R. 712 | - 315 |

K.

| | |
|--|-------|
| Kearsley v. Woodcock, 8 Jur. 120; 3 Ha. 185 | - 22 |
| Keate v. Phillips, 18 Ch. D. 560; 50 L. J. Ch. 664; 44 L. T. 731; 29 W. R. 710 | - 129 |
| Keeling v. Brown, 5 R. R. 70; 5 Ves. jun. 359 | - 134 |
| Kelsey v. Kelsey, L. R. 17 Eq. 495; 30 L. T. 82; 22 W. R. 433 | - 25 |
| Kenrick v. Wood, L. R. 9 Eq. 333; 39 L. J. Ch. 92; 19 W. R. 57 | - 15 |
| Kershaw, Re, Drake v. Kershaw, 37 Ch. D. 674; 57 L. J. Ch. 599; 58 L. T. 512; 36 W. R. 413 | - 194 |
| Kidd & Gibbons' Contract, Re, [1893] 1 Ch. 695; 62 L. J. Ch. 436; 68 L. T. 647; 41 W. R. 507; 3 R. 268 | - 96 |
| Kidney v. Coussmaker, Williams v. Coussmaker, 2 R. R. 118; 2 Ves. jun. 267; 7 Bro. P. C. 573 | - 134 |
| Killick v. Flexney, 4 B. C. C. 161 | - 141 |
| Kingston's (Duchess of) Case, 20 State Trials 355; 1 Leach C. C. 146; 2 Sm. L. C. 713 | - 131 |
| Knight v. Ellis, 2 B. C. C. 570 | - 168 |
| Knollys v. Shepherd, 1 J. & W. 499 | - 352 |

L.

| | |
|--|------------|
| Lacey, Ex parte, 6 R. R. 9; 6 Ves. jun. 625 | - 140, 141 |
| Lacey, Re, 25 Ch. D. 301; 53 L. J. Ch. 287; 49 L. T. 755; 32 W. R. 233 | - 382, 383 |
| Lacey v. Hill, L. R. 19 Eq. 346; 44 L. J. Ch. 215; 32 L. T. 48; 23 W. R. 285 | - 109 |
| Laing's Trusts, Re, L. R. 1 Eq. 416; 35 L. J. Ch. 282; 14 L. T. 56; 14 W. R. 328; 12 Jur. (N. S.) 119 | - 296 |
| Laird v. Briggs, 19 Ch. D. 22; 45 L. T. 238 | - 115 |
| Lake v. Craddock, 3 P. W. 158; 2 W. & T. 952 | - 170 |
| Langford v. Selmes, 3 Jur. (N. S.) 859; 3 K. & J. 220 | - 180 |
| Lechmere v. Clamp, 30 L. J. Ch. 651; 32 L. J. Ch. 276; 7 L. T. 411; 9 W. R. 860; 11 W. R. 83; 30 Beav. 218; 31 Beav. 578; 1 N. R. 81 | - 146 |
| Lemann's Trusts, Re, 22 Ch. D. 633; 52 L. J. Ch. 560; 48 L. T. 389; 31 W. R. 520 | - 163 |
| Le Neve v. Le Neve, 1 Ves. sen. 64; 3 Atk. 646; Amb. 436; 2 W. & T. 175 | - 262 |

| | PAGE |
|---|------|
| <i>Lemage v. Goodban</i> , L. R. 1 P. & D. 57; 35 L. J. P. & M. 28; 13 L. T. 508; 12 Jur. (N. S.) 32 - - - - - | 351 |
| <i>Life Interest and Reversionary Securities Corporation v. Hand-in-Hand Fire and Life Insurance Society</i> , [1898] 2 Ch. 230; 67 L. J. Ch. 548; 78 L. T. 708; 46 W. R. 668 - - - - - | 221 |
| <i>Lincoln (Bishop of) v. Wolferstan</i> , 1 Bla. W. 490; 3 Burr. 1504; 2 Wils. 174 - - - - - | 12 |
| <i>Lloyd v. Balwin</i> , 1 Ves. sen. 173 - - - - - | 51 |
| <i>London & Greenwich Railway Co. v. Goodchild</i> , 13 L. J. Ch. 224; 8 Jur. 455; 3 Rail. Cas. 507 - - - - - | 312 |
| <i>London & South Western Railway Co. v. Blackmore</i> , L. R. 4 H. L. 610; 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305 - - - - - | 312 |
| <i>London & South Western Railway Co. v. Gomm</i> , 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620 - 81, 240, 269 | 269 |
| <i>London School Board, Ex parte, Re Hart</i> , 41 Ch. D. 547; 58 L. J. Ch. 752; 60 L. T. 817; 38 W. R. 61 - - - - - | 118 |
| <i>Low v. Bouverie</i> , [1891] 3 Ch. 82; 60 L. J. Ch. 594; 65 L. T. 533; 40 W. R. 50 - - - - - | 272 |
| <i>Lucas v. Peacock</i> , 9 Beav. 177 - - - - - | 105 |
| <i>Luker v. Dennis</i> , 7 Ch. D. 227; 47 L. J. Ch. 174; 37 L. T. 827; 26 W. R. 167- - - - - | 254 |

M.

| | |
|--|----------|
| <i>Mack v. Postlo</i> , [1894] 2 Ch. 449; 63 L. J. Ch. 593; 71 L. T. 153; 8 R. 339 - - - - - | 105 |
| <i>Mackintosh v. Pogose</i> , [1895] 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251; 43 W. R. 247; 13 R. 254 - - - - - | 299 |
| <i>Mackreth v. Symmons</i> , 10 R. R. 85; 15 Ves. jun. 329; 2 W. & T. 926 | 196 |
| <i>Macleay, Re</i> , L. R. 20 Eq. 186; 44 L. J. Ch. 441; 32 L. T. 682; 23 W. R. 718- - - - - | 22 |
| <i>McMurdo, Re Penfield v. McMurdo</i> , [1897] 1 Ch. 119; 66 L. J. Ch. 67; 75 L. T. 576; 45 W. R. 244 - - - - - | 382 |
| <i>Mahon, Re</i> , [1893] 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257 - - - - - | 392 |
| <i>Mainland v. Upjohn</i> , 41 Ch. D. 126; 58 L. J. Ch. 361; 60 L. T. 614; 37 W. R. 411 - - - - - | 228 |
| <i>Manning v. Lunn</i> , 2 C. & K. 13- - - - - | 258 |
| <i>Marsh & Granville (Earl), Re</i> , 24 Ch. D. 11; 53 L. J. Ch. 81; 48 L. T. 947; 31 W. R. 845 - - - - - | 275 |
| <i>Martin, Re</i> , 41 Ch. D. 381; 58 L. J. Ch. 478; 60 L. T. 555; 37 W. R. 497 - - - - - | 388 |
| <i>Martinson v. Clowes</i> , 21 Ch. D. 857; 51 L. J. Ch. 594; 46 L. T. 882; 30 W. R. 795 - - - - - | 141 |
| <i>Maskell & Goldfinch's Contract, Re</i> , [1895] 2 Ch. 525; 64 L. J. Ch. 678; 72 L. T. 836; 43 W. R. 620; 13 R. 685 - - - 149, 157 | 149, 157 |

AUTHORITIES REFERRED TO.

xix

| | PAGE |
|--|---------------|
| Matson, Re, James v. Dickinson, [1897] 2 Ch. 509; 66 L. J. Ch. 695; 77 L. T. 69 - - - - - | 71 |
| Mawson v. Fletcher, L. R. 6 Ch. 91; 40 L. J. Ch. 131; 23 L. T. 545; 19 W. R. 141 - - - - - | 267 |
| May v. Newton, 34 Ch. D. 347; 56 L. J. Ch. 313; 56 L. T. 140; 35 W. R. 363- - - - - | 345 |
| Metcalfe, Re, Metcalfe v. Metcalfe, [1891] 3 Ch. 1; 60 L. J. Ch. 647; 65 L. T. 426 - - - - - | 36 |
| Michell, Re, Moore v. Moore, [1892] 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375 - - - - - | 108, 197, 198 |
| Miller v. Collins, [1896] 1 Ch. 573; 65 L. J. Ch. 353; 74 L. T. 122; 44 W. R. 466 - - - - - | 210 |
| Mills' Trusts, Re, 37 Ch. D. 312; 40 Ch. D. 14; 57 L. J. Ch. 466; 58 L. T. 620; 60 L. T. 442; 36 W. R. 393; 37 W. R. 81 - | 219, 326 |
| Mills v. Capel, L. R. 20 Eq. 692; 44 L. J. Ch. 674; 33 L. T. 158 - | 252 |
| Minter v. Carr, [1894] 3 Ch. 498; 63 L. J. Ch. 705; 71 L. T. 526; 7 R. 558 - - - - - | 63 |
| Mogridge v. Clapp, [1892] 3 Ch. 382; 61 L. J. Ch. 534; 67 L. T. 100; 40 W. R. 663- - - - - | 192 |
| Molton v. Camroux, 18 L. J. Ex. 68; 12 Jur. 800; 4 Ex. 17 - | 159 |
| Montgomery v. Montgomery, 3 Jo. & Lat. 47; 8 Ir. Eq. R. 740 - | 168 |
| Moody v. Corbett, L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; 14 L. T. 568; 14 W. R. 737 - - - - - | 312 |
| Moody & Yates' Contract, Re, 30 Ch. D. 344; 54 L. J. Ch. 886; 53 L. T. 845; 33 W. R. 785 - - - - - | 80 |
| Morecock v. Dickins, Amb. 678 - - - - - | 239 |
| Morris v. Barrett, 3 Y. & J. 384 - - - - - | 246 |
| Morrison v. Glover, 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84; 4 Ex. 430 - - - - - | 42, 147 |
| Mostyn v. Mostyn, [1893] 3 Ch. 376; 62 L. J. Ch. 959; 69 L. T. 741; 42 W. R. 17; 2 R. 587 - - - - - | 8 |
| Muggleton v. Barnett, 27 L. J. Ex. 125; 30 L. T. 247; 6 W. R. 182; 4 Jur. (N. S.) 139; 2 H. & N. 653; Williams' R. P. 18th ed. 601 | 41 |
| Munt v. Glynes, 41 L. J. Ch. 639; 27 L. T. 366; 20 W. R. 823 - | 29 |
| Musgrave v. Brooke, 26 Ch. D. 792; 54 L. J. Ch. 102; 33 W. R. 211 | 237 |
| Mutual Aid Permanent Benefit Building Society, Re, Ex parte Anson, 30 Ch. D. 434; 55 L. J. Ch. 111; 53 L. T. 802; 34 W. R. 143 | 44 |

N.

| | |
|---|-----|
| Neame v. Moorsom, L. R. 3 Eq. 91; 36 L. J. Ch. 274; 15 W. R. 51; 12 Jur. (N. S.) 913 - - - - - | 67 |
| Negus, Re, [1895] 1 Ch. 73; 64 L. J. Ch. 79; 71 L. T. 716; 43 W. R. 68; 13 R. 85 - - - - - | 389 |
| New Land Development Association & Gray, Re, [1892] 2 Ch. 138; 61 L. J. Ch. 323; 66 L. T. 404; 40 W. R. 295 - - - | 37 |
| Newton v. Marsden, 2. J. & H. 356 - - - - - | 208 |
| Nichols v. Hawkes, 22 L. J. Ch. 255; 10 Ha. 342 - - - - - | 354 |
| Niell v. Morley, 9 Ves. jun. 478 - - - - - | 159 |

O.

| | PAGE |
|--|------|
| Oakden <i>v.</i> Pike, 34 L. J. Ch. 620 ; 12 L. T. 527 ; 13 W. R. 673 ; 11 Jur. (N. S.) 666 - - - - - | 57 |
| Old Battersea and District Building Society <i>v.</i> Inland Revenue Commissioners, [1898] 2 Q. B. 294 ; 67 L. J. Q. B. 696 ; 78 L. T. 746 | 260 |
| Oliver <i>v.</i> Court, 22 R. R. 720 ; Daniell, 301 ; 8 Price, 127 - - - | 141 |
| Onward Building Society, <i>Re</i> , <i>Ex parte</i> Watson, [1893] 1 Q. B. 16 ; 62 L. J. Q. B. 80 ; 68 L. T. 443 ; 41 W. R. 107 ; 57 J. P. 439 | 386 |

P.

| | |
|---|-------------------|
| Paget <i>v.</i> Foley, 2 Bing. N. C. 679 ; 3 Sc. 120 ; 2 Hodges, 32 - - - | 201 |
| Paine <i>v.</i> Meller, 5 R. R. 327 ; 6 Ves. jun. 349 - - - - - | 164 |
| Palliser <i>v.</i> Gurney, 19 Q. B. D. 519 ; 56 L. J. Q. B. 546 ; 35 W. R. 760 ; 51 J. P. 520 - - - - - | 78 |
| Palmer <i>v.</i> Earith, 14 L. J. Ex. 256 ; 14 M. & W. 428 - - - - - | 259 |
| Parker, <i>Re</i> , 29 Ch. D. 199 ; 54 L. J. Ch. 959 ; 52 L. T. 686 ; 33 W. R. 541 - - - - - | 391 |
| Parker <i>v.</i> Blenkhorn, Newbould <i>v.</i> Bailward, 14 App. Cas. 1 ; 58 L. J. Q. B. 209 ; 59 L. T. 906 ; 37 W. R. 401 - - - | 387, 391 |
| Parsons, <i>Re</i> , Stockley <i>v.</i> Parsons, 45 Ch. D. 51 ; 59 L. J. Ch. 666 ; 62 L. T. 929 ; 38 W. R. 712 - - - - - | 301 |
| Patching <i>v.</i> Bull, 46 L. T. 227 ; 30 W. R. 244 - - - - - | 251 |
| Patent File Co., <i>Re</i> , <i>Ex parte</i> Birmingham Banking Co., L. R. 6 Ch. 83 ; 40 L. J. Ch. 190 ; 23 L. T. 484 ; 19 W. R. 193 - - - | 55 |
| Patman <i>v.</i> Harland, 17 Ch. D. 353 ; 50 L. J. Ch. 642 ; 44 L. T. 728 ; 29 W. R. 707 - - - - - | 67, 187, 192, 239 |
| Payne, <i>Re</i> , 25 Beav. 556 - - - - - | 22 |
| Pearson, <i>Re</i> , <i>Ex parte</i> Stephens, 3 Ch. D. 807 ; 35 L. T. 68 ; 25 W. R. 126 - - - - - | 22 |
| Pearson <i>v.</i> Dolman, L. R. 3 Eq. 315 ; 36 L. J. Ch. 258 ; 15 W. R. 120 | 22 |
| Pease <i>v.</i> Jackson, L. R. 3 Ch. 576 ; 37 L. J. Ch. 725 ; 17 W. R. 1 | 44 |
| Peck & London School Board, <i>Re</i> , [1893] 2 Ch. 315 ; 62 L. J. Ch. 598 ; 68 L. T. 847 ; 41 W. R. 388 ; 3 R. 511 - - - - - | 111 |
| Pedder <i>v.</i> Hunt, 18 Q. B. D. 565 ; 56 L. J. Q. B. 212 ; 56 L. T. 687 ; 35 W. R. 371 - - - - - | 252 |
| Pelton Brothers <i>v.</i> Harrison, [1891] 2 Q. B. 422 ; 60 L. J. Q. B. 742 ; 65 L. T. 514 ; 39 W. R. 689 - - - - - | 78 |
| Perkins <i>v.</i> Baynton, 1 B. C. C. 118 - - - - - | 317 |
| Perrin <i>v.</i> Lyon, 9 R. R. 520 ; 9 East, 170 - - - - - | 208 |
| Perry <i>v.</i> Eames, [1891] 1 Ch. 658 ; 60 L. J. Ch. 345 ; 64 L. T. 438 ; 39 W. R. 602 - - - - - | 114 |
| Pertwee <i>v.</i> Townsend, [1896] 2 Q. B. 129 ; 65 L. J. Q. B. 659 ; 75 L. T. 104 - - - - - | 25 |
| Phipps, <i>Re</i> , 2 Curt. 368 - - - - - | 348 |
| Pike <i>v.</i> Fitzgibbon, 17 Ch. D. 454 ; 50 L. J. Ch. 394 ; 44 L. T. 562 ; 29 W. R. 551 - - - - - | 78 |

AUTHORITIES REFERRED TO.

xxi

| | PAGE |
|--|------|
| Pinnington v. Galland, 22 L. J. Ex. 349; 22 L. T. (O. S.) 41; 1 C. L. R. 819; 9 Ex. 1 - - - - - | 111 |
| Pinnock v. Bailey, 23 Ch. D. 497; 52 L. J. Ch. 880; 48 L. T. 811; 31 W. R. 912 - - - - - | 105 |
| Pledge v. White, [1896] A. C. 187; 65 L. J. Ch. 449; 74 L. T. 323; 44 W. R. 589 - - - - - | 63 |
| Polden v. Bastard, L. R. 1 Q. B. 156; 35 L. J. Ex. 92; 13 L. T. 441; 14 W. R. 198 - - - - - | 111 |
| Ponsford & Newport District School Board, Re, [1894] 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358; 7 R. 622 - - | 47 |
| Pope, Re, 17 Q. B. D. 743; 55 L. J. Q. B. 522; 55 L. T. 369; 34 W. R. 693 - - - - - | 172 |
| Poppleton v. Buchanan, Buchanan v. Poppleton, 27 L. J. C. P. 210; 31 L. T. 83; 6 W. R. 372; 4 Jur. (N. S.) 414; 4 C. B. (N. S.) 20 | 178 |
| Powell v. Powell, L. R. 10 Ch. 130; 44 L. J. Ch. 122; 31 L. T. 737; 23 W. R. 201 - - - - - | 241 |
| Price, Re, Stafford v. Stafford, 28 Ch. D. 709; 54 L. J. Ch. 509; 52 L. T. 430; 33 W. R. 520 - - - - - | 350 |
| Price v. Price, 35 Ch. D. 297; 56 L. J. Ch. 530; 56 L. T. 843; 35 W. R. 386 - - - - - | 8 |
| Prole v. Soady, L. R. 3 Ch. 220; 37 L. J. Ch. 246; 16 W. R. 445 | 210 |
| Prosser v. Watts, 22 R. R. 238; 6 Madd. 59 - - - - - | 206 |
| Pruen v. Osborne, 11 Sim. 132 - - - - - | 167 |
| Pyer v. Carter, 26 L. J. Ex. 258; 28 L. T. (O. S.) 371; 5 W. R. 371; 1 H. & N. 916 - - - - - | 111 |

R.

| | |
|--|----------|
| Rabbidge, Ex parte, Re Pooley, 8 Ch. D. 367; 38 L. T. 663; 26 W. R. 646 - - - - - | 36 |
| Ralph v. Carrick, 11 Ch. D. 873; 48 L. J. Ch. 801; 40 L. T. 505 - | 167 |
| Ray's Settled Estates, Re, 25 Ch. D. 464; 53 L. J. Ch. 205; 50 L. T. 80; 32 W. R. 458 - - - - - | 162 |
| Rayner v. Preston, 18 Ch. D. 1; 50 L. J. Ch. 472; 44 L. T. 787; 29 W. R. 547; 45 J. P. 829 - - - - - | 164 |
| Read, Re, [1894] 3 Ch. 238; 63 L. J. Ch. 831; 71 L. T. 189; 42 W. R. 601; 8 R. 489 - - - - - | 383 |
| Rebbeck, Re, Bennett v. Rebbeck, 63 L. J. Ch. 596; 71 L. T. 74; 42 W. R. 473; 8 R. 376 - - - - - | 51 |
| Redding, Re, [1897] 1 Ch. 876; 66 L. J. Ch. 460; 76 L. T. 339; 45 W. R. 457 - - - - - | 184 |
| Redgrave v. Hurd, 20 Ch. D. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30 W. R. 251 - - - - - | 267 |
| Reese River Silver Mining Co. v. Smith, L. R. 4 H. L. 64; 39 L. J. Ch. 849; 17 W. R. 1042 - - - - - | 267 |
| Reeve v. Berridge, 20 Q. B. D. 523; 57 L. J. Q. B. 265; 58 L. T. 836; 36 W. R. 517; 52 J. P. 549 - - - - - | 82 |
| Regina v. Vice-Registrar of the Office of Land Registry, 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 38 W. R. 236 - | 279, 311 |

| | PAGE |
|---|---------|
| Rennell <i>v.</i> Lincoln (Bishop of), 5 L. J. (O. S.) K. B. 320; 7 Barn. & Cress. 113; 9 Dowl. & Ry. 810; 1 Cl. & F. 527; 8 Bing. 490; 1 M. & Scott, 683; 7 Bligh, (N. S.) 241 - - - - - | 11 |
| Rex <i>v.</i> Joliffe, 26 R. R. 264; 1 L. T. (O. S.) K. B. 232; 2 Barn. & Cress. 54; 3 Dowl. & Ry. 240 - - - - - | 112 |
| Rhodes <i>v.</i> Dawson, 16 Q. B. D. 548; 55 L. J. Q. B. 134; 34 W. R. 240 | 34 |
| Robins <i>v.</i> Goldingham, L. R. 13 Eq. 440; 41 L. J. Ch. 813; 25 L. T. 900; 20 W. R. 277 - - - - - | 195 |
| Robinson <i>v.</i> Trevor, 12 Q. B. D. 423; 43 L. J. Q. B. 85; 50 L. T. 190; 32 W. R. 374 - - - - - | 44 |
| Robson, Re, 45 Ch. D. 71; 59 L. J. Ch. 627; 63 L. T. 372; 38 W. R. 556 - - - - - | 390 |
| Roddy <i>v.</i> Fitzgerald, 6 H. L. C. 823 - - - - - | 168 |
| Rose <i>v.</i> Calland, 5 Ves. jun. 186 - - - - - | 107 |
| Routledge <i>v.</i> Dorril, 2 R. R. 250; 2 Ves. jun. 357 - - - - - | 247 |
| Rumney & Smith's Contract, [1897] 2 Ch. 351; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678 - - - - - | 44, 222 |
| Russel <i>v.</i> Russel, 1 B. C. C. 269; 2 W. & T. 76 - - - - - | 128 |
| Ryder, Re, 20 Ch. D. 514; 51 L. J. Ch. 401; 46 L. T. 336; 30 W. R. 417 - - - - - | 162 |

S.

| | |
|--|---------------|
| Salt, Re, [1896] 1 Ch. 117; 65 L. J. Ch. 152; 73 L. T. 598; 44 W. R. 146 - - - - - | 293 |
| Sandbach & Edmondson's Contract, Re, [1891] 1 Ch. 99; 60 L. J. Ch. 60; 63 L. T. 797; 39 W. R. 193 - - - - - | 59 |
| Sanders <i>v.</i> Sanders, 19 Ch. D. 373; 51 L. J. Ch. 276; 45 L. T. 637 | 204 |
| Sands to Thompson, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397 - - - - - | 189, 202, 260 |
| Saunders, In the goods of, L. R. 1 P. & D. 16; 35 L. J. P. & M. 26; 13 L. T. 411; 14 W. R. 148 - - - - - | 348 |
| Savery <i>v.</i> Enfield Local Board, [1893] A. C. 218; 62 L. J. Ch. 674; 68 L. T. 722; 42 W. R. 33; 57 J. P. 581; 1 R. 160 - - - - - | 388 |
| Sayers <i>v.</i> Collyer, 28 Ch. D. 103; 54 L. J. Ch. 1; 51 L. T. 723; 33 W. R. 91; 49 J. P. 244 - - - - - | 271 |
| Scott & Alvarez's Contract, Re, [1895] 1 Ch. 596; [1895] 2 Ch. 603; 64 L. J. Ch. 376; 64 L. J. Ch. 821; 72 L. T. 455; 73 L. T. 43; 43 W. R. 694; 12 R. 474 - - - - - | 59, 78, 275 |
| Scott <i>v.</i> Nixon, 3 D. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8 | 189, 199 |
| Scott <i>v.</i> Tyler, 2 B. C. C. 431; 2 Dick. 712; 1 W. & T. 535 - - - - - | 208 |
| Scottish Widows' Fund <i>v.</i> Craig, 20 Ch. D. 208; 51 L. J. Ch. 363; 30 W. R. 463 - - - - - | 25 |
| Searle <i>v.</i> Cooke, 43 Ch. D. 519; 59 L. J. Ch. 259; 62 L. T. 211 - - - - - | 25 |
| Sellin <i>v.</i> Price, L. R. 2 Ex. 189; 36 L. J. Ex. 93; 16 L. T. 21; 15 W. R. 749 - - - - - | 100 |
| Selwyn <i>v.</i> Garfit, 38 Ch. D. 273; 57 L. J. Ch. 609; 59 L. T. 233; 36 W. R. 513 - - - - - | 223 |

AUTHORITIES REFERRED TO.

xxiii

| | PAGE |
|---|-----------------|
| Seton v. Slade, 6 R. R. 124 ; 7 Ves. jun. 265 ; 2 W. & T. 475 | - 58 |
| Shackleton v. Sutcliffe, 12 Jur. 199 ; 1 De G. & S. 609 | - 243 |
| Shafto's Trusts, Re, 29 Ch. D. 247 ; 54 L. J. Ch. 885 ; 53 L. T. 261 ; | |
| 33 W. R. 728 | - 327 |
| Shallcross v. Finden, 3 R. R. 75 ; 3 Ves. jun. 738 | - 134 |
| Shapland v. Smith, 1 B. C. C. 75 | - 354 |
| Sharp v. St. Sauveur, L. R. 7 Ch. 343 ; 41 L. J. Ch. 576 ; 26 L. T. | |
| 142 ; 20 W. R. 269 | - 23 |
| Shears v. Goddard, [1896] 1 Q. B. 406 ; 65 L. J. Q. B. 344 ; 74 | |
| L. T. 128 ; 44 W. R. 402 | - 36 |
| Shelley's Case, 1 Rep. 93b ; Tu. L. C. 332 | - 138 |
| Sibley v. Perry, 6 R. R. 183 ; 7 Ves. jun. 522 | - 167 |
| Sibun v. Pearce, 44 Ch. D. 354 ; 63 L. T. 123 ; 38 W. R. 658 | - 46 |
| Simpson v. Lamb, 26 L. J. Q. B. 121 ; 28 L. T. (O. S.) 245 ; | |
| 5 W. R. 227 ; 3 Jur. (N. S.) 412 ; 7 El. & Bl. 84 | - 381 |
| Singleton v. Gilbert, 1 Cox, 68 ; 1 B. C. C. 542 | - 342 |
| Smith & Stott, Re, 29 Ch. D. 1009 ; 48 L. T. 512 ; 31 W. R. 411 | - 186 |
| Smith v. Adams, 24 L. J. Ch. 258 ; 23 L. T. (O. S.) 325 ; 2 W. R. | |
| 698 ; 18 Jur. 968 ; 5 De G. M. & G. 712 ; 18 Beav. 499 ; 2 Eq. | |
| Rep. 1001 | - 74, 109 |
| Solomon & Meagher's Contract, Re, 40 Ch. D. 508 ; 58 L. J. Ch. | |
| 339 ; 60 L. T. 487 ; 37 W. R. 331 | - 129, 190, 226 |
| Spencer's Case, 5 Rep. 16a ; 1 Sm. L. C. 52 | - 80 |
| Spradbery's Mortgage, Re, 14 Ch. D. 514 ; 49 L. J. Ch. 623 ; 43 | |
| L. T. 82 ; 28 W. R. 822 | - 219 |
| Steele v. Waller, 3 L. T. 74 ; 6 Jur. (N. S.) 1004 ; 28 Beav. 466 | - 325 |
| Stevens v. Austin, 30 L. J. Q. B. 212 ; 3 L. T. 810 ; 7 Jur. (N.S.) | |
| 873 ; 3 E. & E. 685 | - 331 |
| Stillman v. Weedon, 18 L. J. Ch. 46 ; 12 Jur. 992 ; 16 Sim. 26 | - 351 |
| Stogdon v. Lee, [1891] 1 Q. B. 661 ; 60 L. J. Q. B. 669 ; 64 L. T. | |
| 494 ; 39 W. R. 467 ; 55 J. P. 533 | - 29, 78 |
| Stokoe v. Robson, 19 Ves. jun. 385 ; 3 Ves. & B. 51 | - 207 |
| Strachan v. Thomas, 12 Ad. & E. 536 ; 4 Per. & D. 229 | - 27, 201 |
| Stuart and Olivant & Seadon's Contract, Re, [1896] 2 Ch. 328 ; | |
| 65 L. J. Ch. 576 ; 74 L. T. 450 ; 44 W. R. 610 | - 5 |
| Suffield v. Brown, 33 L. J. Ch. 249 ; 9 L. T. 627 ; 12 W. R. 356 ; | |
| 10 Jur. (N. S.) 111 ; 3 N. R. 340 ; 4 De G. J. & S. 185 | - 111 |
| Sutton v. Sadler, 26 L. J. C. P. 284 ; 5 W. R. 880 ; 3 C. B. (N. S.) 87 | 350 |
| Sutton v. Sutton, 22 Ch. D. 511 ; 52 L. J. Ch. 333 ; 48 L. T. 95 ; | |
| 31 W. R. 369 | - 202 |
| Sykes, In the goods of, L. R. 3 P. & D. 26 ; 42 L. J. P. & M. 17 ; | |
| 28 L. T. 142 ; 21 W. R. 416 | - 357 |
| Symons v. Leaker, 15 Q. B. D. 629 ; 54 L. J. Q. B. 480 ; 53 L. T. | |
| 227 ; 33 W. R. 875 ; 49 J. P. 775 | - 115 |

T.

| | PAGE |
|--|---------------|
| Tadcaster Tower Brewery Co. v. Wilson, [1897] 1 Ch. 705; 66 L. J. Ch. 402; 76 L. T. 459; 45 W. R. 428; 61 J. P. 360 - - - | 254 |
| Tait v. Gosling, 11 Ch. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394 - - - - - | 180 |
| Taltarum's Case, Year Book 12 Edw. IV. 19 - - - - - | 142 |
| Tanqueray-Willaume & Landau, Re, 20 Ch. D. 465; 51 L. J. Ch. 434; 46 L. T. 542; 30 W. R. 801 - - - - - | 57, 134 |
| Taylor, Re, 52 L. J. Ch. 728; 49 L. T. 420; 31 W. R. 596; W. N. (1883) 95 - - - - - | 162 |
| Thellusson v. Woodford, 8 R. R. 104; 11 Ves. jun. 112; 1 Bos. & P. N. R. 357 - - - - - | 249 |
| Thomas v. Britnell, 2 Ves. sen. 313 - - - - - | 48, 355 |
| Thomas v. Sylvester, L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; 21 W. R. 912 - - - - - | 25 |
| Thompson & Holt, Re, 44 Ch. D. 492; 59 L. J. Ch. 651; 62 L. T. 651; 38 W. R. 524 - - - - - | 223 |
| Thornley v. Thornley, [1893] 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311 - - - - - | 106, 170, 315 |
| Tomlinson, Re, Tomlinson v. Andrew, [1898] 1 Ch. 232; 67 L. J. Ch. 97; 78 L. T. 12; 46 W. R. 299 - - - - - | 183, 184 |
| Tomlinson v. Bullock, 4 Q. B. D. 230; 48 L. J. M. C. 95; 40 L. T. 459; 27 W. R. 552 - - - - - | 7 |
| Torrance v. Bolton, L. R. 8 Ch. 118; 42 L. J. Ch. 177; 27 L. T. 738; 21 W. R. 134 - - - - - | 243 |
| Toulmin v. Steere, 3 Mer. 210 - - - - - | 214 |
| Trower v. Butts, 24 R. R. 164; 1 L. J. (O. S.) Ch. 115; 1 Sim. & St. 181 - - - - - | 342 |
| Trustees of St. Saviour's Rectory & Oyler, Re, 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325 - - - | 47, 59 |
| Tulk v. Moxhay, 18 L. J. Ch. 83; 13 L. T. (O. S.) 21; 13 Jur. 89; 2 Ph. 774; 1 H. & Tw. 105 - - - - - | 81, 269 |
| Turner, Re, Glenister v. Harding, 29 Ch. D. 985; 54 L. J. Ch. 1089; 53 L. T. 528 - - - - - | 14 |
| Tweedie & Miles, Re, 27 Ch. D. 315; 54 L. J. Ch. 71; 33 W. R. 133 | 332 |
| Twigg's Estate, Re, Twigg v. Black, [1892] 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604; 40 W. R. 297 - - - - - | 167 |
| Twyne's Case, 3 Rep. 80b; 1 Sm. L. C. 1 - - - - - | 297 |
| Tyler v. Yates, L. R. 6 Ch. 665; 40 L. J. Ch. 768; 25 L. T. 284; 19 W. R. 909 - - - - - | 137 |
| Tyrell's Case, Dyer 155a; Tu. L. C. 289 - - - - - | 336 |

U.

| | |
|--|-------|
| Ulster Permanent Building Society v. Glenton, 21 L. R. Ir. 124 - | 44 |
| Upperton v. Nickolson, L. R. 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733 - - - - - | 5, 58 |

V.

| | PAGE |
|--|------|
| Venn & Furze's Contract, Re, [1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440; 8 R. 220 - - - - - | 9 |
| Vick v. Edwards, 3 P. W. 372; 2 Eq. Abr. 473 - - - - - | 170 |
| Villars, Ex parte, Rogers, Re, L. R. 9 Ch. 432; 43 L. J. Bk. 76; 30 L. T. 348; 22 W. R. 397 - - - - - | 298 |
| Viner v. Francis, 2 R. R. 29; 2 Cox, 190; Tu. L. C. 417 - - - | 342 |
| Voss, Re, King v. Voss, 13 Ch. D. 504; 42 L. T. 78; 28 W. R. 565 | 211 |

W.

| | |
|---|----------|
| Waite v. Morland, 38 Ch. D. 135; 57 L. J. Ch. 655; 59 L. T. 185; 36 W. R. 484 - - - - - | 175 |
| Waldron v. Sloper, 1 Drew. 193 - - - - - | 129 |
| Walker v. Richardson, 2 M. & W. 882; M. & H. 251 - - - | 235 |
| Walker v. Shore, 10 R. R. 41; 15 Ves. jun. 122 - - - - - | 343 |
| Walker v. Smalwood, Amb. 676 - - - - - | 332 |
| Wallis v. Hands, [1893] 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471; 3 R. 351 - - - - - | 180 |
| Walsh v. Lincoln (Bishop of), L. R. 10 C. P. 518; 44 L. J. C. P. 244; 32 L. T. 471; 23 W. R. 829 - - - - - | 12 |
| Walsh v. Lonsdale, 21 Ch. D. 9; 52 L. J. Ch. 2; 46 L. T. 858; 31 W. R. 109 - - - - - | 179 |
| Want v. Stallibrass, L. R. 8 Ex. 175; 42 L. J. Ex. 108; 29 L. T. 293; 21 W. R. 685 - - - - - | 57 |
| Ward (Lord) v. Lumley, 29 L. J. Ex. 372; 5 H. & N. 656 - - - | 100 |
| Warde v. Dixon, 28 L. J. Ch. 315; 32 L. T. 349; 7 W. R. 148; 5 Jur. (N. S.) 698 - - - - - | 57 |
| Webber v. Jones, 6 Ir. Eq. R. 142 - - - - - | 346 |
| Webster v. The Overseers of Ashton-under-Lyne, Orme's Case, L. R. 8 C. P. 281; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171 | 337 |
| Wellby v. Still, [1894] 3 Ch. 641; 63 L. J. Ch. 931; 71 L. T. 426; 43 W. R. 73; 8 R. 658 - - - - - | 385, 389 |
| Wheatley v. Silkstone and Haigh Moor Coal Co., 29 Ch. D. 715; 54 L. J. Ch. 778; 52 L. T. 798; 33 W. R. 797 - - - - - | 97 |
| Wheaton v. Maple & Co., [1893] 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549 - - - - - | 113, 114 |
| Wheeldon v. Burrows, 12 Ch. D. 31; 48 L. J. Ch. 853; 41 L. T. 327; 48 W. R. 196 - - - - - | 111 |
| Whistler, Re, 35 Ch. D. 561; 56 L. J. Ch. 827; 57 L. T. 79; 35 W. R. 662 - - - - - | 134 |
| Whiston's Estate, Re, Lovatt v. Whiston, [1894] 1 Ch. 661; 63 L. J. Ch. 273; 70 L. T. 681; 42 W. R. 327; 8 R. 175 - - - | 68 |
| Whitbread v. Lord St. John, 7 R. R. 366; 10 Ves. jun. 152 - - - | 342 |
| Whitby v. Mitchell, 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337 - - - - - | 249, 250 |

| | PAGE |
|---|----------|
| White, Re, 29 W. R. 820 - - - - - | 219 |
| White v. Rapton, 3 Curt. 818 - - - - - | 348 |
| Wieland v. Bird, [1894] P. 262; 63 L. J. P. 162; 71 L. T. 267; 6 R. 574 - - - - - | 182 |
| Wild's Case, 6 Rep. 16b; Tu. L. C. 361 - - - - - | 121 |
| Wilkinson v. Gibson, L. R. 4 Eq. 162; 36 L. J. Ch. 646; 16 L. T. 733; 15 W. R. 983 - - - - - | 106 |
| Wilks, Re, Child v. Bulmer, [1891] 3 Ch. 59; 60 L. J. Ch. 696; 65 L. T. 184; 40 W. R. 13 - - - - - | 170 |
| Williams' & Duchess of Newcastle's Contract, Re, [1897], 2 Ch. 144; 66 L. J. Ch. 543; 76 L. T. 646; 45 W. R. 627; 61 J. P. 454 | 321 |
| Williams' Estate, Re, 21 L. J. Ch. 437; 5 De G. & S. 515 - | 241, 346 |
| Williams v. Cooke, 4 Giff. 343 - - - - - | 210 |
| Williams v. Spargo, W. N. (1893) 100 - - - - - | 191 |
| Willis v. Brown, 8 L. J. Ch. 321; 10 Sim. 127 - - - - - | 264 |
| Wilson, Re, Pennington v. Payne, 54 L. T. 600; 34 W. R. 512 | 50, 333 |
| Wilson v. Hart, L. R. 1 Ch. 463; 35 L. J. Ch. 569; 14 L. T. 499; 14 W. R. 748; 12 Jur. (N. S.) 460 - - - - - | 81 |
| Withall, Re, [1891] 3 Ch. 8; 61 L. J. Ch. 14; 64 L. T. 704; 39 W. R. 529 - - - - - | 385 |
| Withers v. Withers, Amb. 151 - - - - - | 126 |
| Wood v. Richardson, 5 Jur. 623; 4 Beav. 174 - - - - - | 331 |
| Woods & Lewis' Contract, Re, [1898] 2 Ch. 211; 67 L. J. Ch. 475; 78 L. T. 665; 46 W. R. 643 - - - - - | 60 |
| Woolam v. Hearne, 6 R. R. 113; 7 Ves. jun. 211; 2 W. & T. 513 | 243 |
| Worsley v. Scarborough (Earl of), 3 Atk. 392 - - - - - | 8 |
| Wright v. Williams, 1 M. & W. 77; Tyr. & G. 375; 1 Gale. 410 - | 115 |
| Wylie, Re, Wylie v. Moffat, [1895] 2 Ch. 116; 64 L. J. Ch. 613; 43 W. R. 475; 13 R. 483 - - - - - | 350 |
| Wylson v. Dunn, 34 Ch. D. 569; 56 L. J. Ch. 855; 56 L. T. 192; 35 W. R. 405; 51 J. P. 458 - - - - - | 323 |

X.

| | |
|---|-----|
| X., Re, [1894] 2 Ch. 415; 63 L. J. Ch. 613; 71 L. T. 139; 42 W. R. 657; 7 R. 365 - - - - - | 161 |
|---|-----|

Y.

| | |
|--|-----|
| Yonge v. Furse, 26 L. J. Ch. 352; 29 L. T. (O. S.) 34; 3 Jur. (N. S.) 603; 5 W. R. 394; 8 De G. M. & G. 756 - - - - - | 208 |
|--|-----|

STATUTES REFERRED TO.

| | PAGE |
|---|---------------|
| 13 Ed. I. stat. 1, Statute of Westminster the Second. | |
| c. 18 (Enrolment) | 120 |
| 18 Ed. I. stat. 1, Quia Emptores. | |
| c. 1 (Conveyances)..... | 67 |
| 25 Ed. I. stat. 1, Magna Charta. | |
| c. 36 (Mortmain and Charitable Uses) | 231 |
| 27 Hen. VIII. | |
| c. 10, Statute of Uses (Executory Interests) | 136 |
| (Jointure)..... | 171 |
| (Release) | 265 |
| (Uses) | 336 |
| c. 16, Statute of Enrolments (Enrolment) | 119 |
| 32 Hen. VIII. | |
| c. 1, Statute of Wills (Wills) | 353 |
| c. 28, Enabling Statute, 1540 (Entail) | 122 |
| 34 & 35 Hen. VIII. | |
| c. 5 (Wills) | 353 |
| c. 20 (Entail) | 123 |
| 13 Eliz. | |
| c. 5, Act of Elizabeth, 1571 (Consideration)..... | 61 |
| (Settlements)..... | 297 |
| 27 Eliz. | |
| c. 4, Act of Elizabeth, 1584 (Settlements) | 297 |
| 31 Eliz. | |
| c. 6, Act against Simony, 1589 (Advowsons) | 12 |
| 43 Eliz. | |
| c. 2, Poor Relief Act, 1601 (Rates and Taxes) | 256 |
| 15 Car. II. | |
| c. 17, Bedford Level Act (Registration of Deeds and Wills)... | 264 |
| 29 Car. II. | |
| c. 3, Statute of Frauds (Agents) | 15 |
| (Agreements)..... | 17 |
| (Deeds) | 100 |
| (Enrolment) | 120 |
| (Equitable Estates) | 126, 127 |
| (Equitable Mortgages)..... | 128 |
| (Feoffments) | 139 |
| (Leasehold Property) | 179, 180 |
| (Life Estate) | 197 |
| (Release)..... | 265 |
| (Wills) | 348, 349, 353 |

| | PAGE |
|--|--------------------------|
| 1 Will. & Mar. | |
| c. 30 (Mines and Minerals) | 214 |
| 5 Will. & Mar. | |
| c. 6 (Mines and Minerals) | 214 |
| 2 & 3 Anne, | |
| c. 4, Yorkshire (West Riding) Registry Act, 1703 (Registra- tion of Deeds and Wills) | 263 |
| c. 20 (Mortmain and Charitable Uses) | 232 |
| 6 Anne, | |
| c. 20, Yorkshire (West Riding) Registry Act, 1706 (Registra- tion of Deeds and Wills) | 263 |
| c. 62, Yorkshire (East Riding) Registry Act, 1707 (Registra- tion of Deeds and Wills) | 263 |
| c. 72, Cestui que vie Act, 1707 (Life Estate) | 198 |
| 7 Anne, | |
| c. 20, Middlesex Registry Act, 1708 (Registration of Deeds and Wills)..... | 262, 263 |
| 13 Anne, | |
| c. 13, Presentation of Benefices Act, 1713 (Advowsons) | 12 |
| 4 Geo. II. | |
| c. 21, British Nationality Act, 1730 (Aliens) | 23 |
| c. 28, Landlord and Tenant Act, 1730 (Annuities and Rent- charges) | 24 |
| | (Leasehold Property) 184 |
| 8 Geo. II. | |
| c. 6, Yorkshire (North Riding) Registry Act, 1734 (Registra- tion of Deeds and Wills) | 263 |
| 9 Geo. II. | |
| c. 36, Charitable Uses Act, 1735 (Enrolment) | 119, 232 |
| 14 Geo. II. | |
| c. 20 (Fines and Recoveries) | 142 |
| (Life Estate) | 197 |
| 20 Geo. II. | |
| c. 42, Wales and Berwick Act, 1746 (Settled Land) | 285 |
| 9 Geo. III. | |
| c. 16, Crown Suits Act, 1769 (Limitation, Statutes of) | 199 |
| 13 Geo. III. | |
| c. 21, British Nationality Act, 1772 (Aliens) | 23 |
| 17 Geo. III. | |
| c. 26 (Enrolment) | 120 |
| 33 Geo. III. | |
| c. 13, Acts of Parliament (Commencement) Act, 1793 (Act of Parliament)..... | 7 |
| 36 Geo. III. | |
| c. 52, Legacy Duty Act, 1796 (Charges by Will) | 52 |
| (Death Duties)..... | 95 |
| 38 Geo. III. | |
| c. 60, Land Tax Perpetuation Act, 1798 (Land Tax)..... | 178 |
| 39 & 40 Geo. III. | |
| c. 98, Accumulations Act, 1800, "Thellusson Act" (Per- petuities) | 249 |

STATUTES REFERRED TO.

xxix

PAGE

| | |
|---|-------------------------|
| 41 Geo. III. | |
| c. 109, Inclosure (Consolidation) Act, 1801 (Inclosures, Exchanges and Partitions under the Inclosure Acts) | 156 |
| 53 Geo. III. | |
| c. 141 (Enrolment)..... | 120 |
| c. 192 (Copyholds) | 72 |
| (Wills) | 351, 353 |
| 3 Geo. IV. | |
| c. 92 (Enrolment) | 120 |
| 7 Geo. IV. | |
| c. 75 (Enrolment) | 120 |
| 10 Geo. IV. | |
| c. 56 (Building Societies) | 42 |
| 11 Geo. IV. & 1 Will. IV. | |
| c. 47, Debts Recovery Act, 1830 (Infants) | 157 |
| c. 65, Infants' Protection Act, 1830 (Infants) | 157 |
| 2 & 3 Will. IV. | |
| c. 71, Prescription Act, 1832, "Lord Tenterden's Act" (Easements and Profits à Prendre) | 112, 113, 114, 115, 116 |
| 3 & 4 Will. IV. | |
| c. 27, Real Property Limitation Act, 1833— | |
| (Advowsons) | 11 |
| (Annuities and Rentcharges) | 27 |
| (Dower and Freebench) | 109 |
| (Entail) | 124 |
| (Legal Estate)..... | 189 |
| (Limitation, Statutes of).... | 200, 201, 202, 203, 204 |
| (Possessory Titles) | 252 |
| (Reconveyance) | 260 |
| c. 42, Civil Procedure Act, 1833 (Annuities and Rentcharges) | 27 |
| (Limitation, Statutes of) ... | 201 |
| c. 74, Fines and Recoveries Act, 1833 (Acknowledgment)..... | 6, 7 |
| (Aliens) | 23 |
| (Copyholds)..... | 73 |
| (Enrolment) | 120 |
| (Entail)..... | 122, 123, 124 |
| (Equitable Estates) ... | 127 |
| (Fines and Recoveries). .. | 142 |
| (Insanity) | 162 |
| (Married Women).... | 209, 210 |
| (Spes Successionis)..... | 301 |
| (Tenants by Entireties) .. | 316 |
| c. 87, Inclosure Act, 1833 (Inclosures, Exchanges and Partitions under the Inclosure Acts) | 156 |
| c. 90, Lighting and Watching Act, 1833 (Rates and Taxes)... | 257 |
| c. 105, Dower Act, 1833 (Borough-English) | 41 |
| (Dower and Freebench) | 107, 108 |
| (Entail) | 125 |
| (Equitable Estates) | 126 |
| (Gavelkind)..... | 150 |
| (Appendix B.)..... | 371 |

| | PAGE |
|--|----------|
| 3 & 4 Will. IV. (<i>continued</i>). c. 106, Inheritance Act, 1833 (Coparceners)..... | 71 |
| (Descent) | 101 |
| 4 & 5 Will. IV. c. 23, Escheat and Forfeiture Act, 1834— (Convicts, Traitors and Felons) | 70 |
| (Trustees, Sales and Mortgages by) | 329 |
| c. 40 (Building Societies) | 42 |
| 5 & 6 Will. IV. c. 50, Highway Act, 1835 (Rates and Taxes) | 256 |
| c. 62, Statutory Declarations Act, 1835 (Appendix C.) | 378 |
| 6 & 7 Will. IV. c. 32, Building Societies Act, 1836 (Building Societies) | 42, 43 |
| (Reconveyance) | 260 |
| c. 71, Tithe Act, 1836 (Tithe Rentcharge)..... | 319 |
| c. 86, Births and Deaths Registration Act, 1836 (Births, Mar- riages and Deaths)..... | 39 |
| 7 Will. IV. & 1 Vict. c. 22, Births and Deaths Registration Act, 1837 (Births, Mar- riages and Deaths) | 39 |
| c. 26, Wills Act, 1837 (Appointments) | 30 |
| (Copyholds)..... | 72 |
| (Entail) | 121 |
| (Fee Simple) | 138 |
| (Infants) | 157 |
| (Issue) | 168 |
| (Joint Tenants) | 169 |
| (Life Estate) | 197 |
| (Wills) ... 348, 350, 351, 352, 353, 354, 355, 356, 358 | |
| c. 28, Real Property Limitation Act, 1837 (Limitation, Statutes of) | 202 |
| 1 & 2 Vict. c. 20, Queen Anne's Bounty Act, 1838 (Grant) | 151 |
| c. 110, Judgments Act, 1838 (Judgments, Writs and Orders, Registration of) | 173 |
| 2 & 3 Vict. c. 11, Judgments Act, 1839— (Action) | 8 |
| (Judgments, Writs and Orders, Registration of) | 173 |
| c. 60, Debts Recovery Act, 1839 (Infants) | 157 |
| 3 & 4 Vict. c. 82, Judgments Act, 1840 (Judgments, Writs and Orders, Registration of) | 173 |
| c. 113, Ecclesiastical Commissioners Act, 1840 (Advowsons)... | 13 |
| 4 & 5 Vict. c. 21 (Release) | 265, 266 |
| c. 35, Copyhold Act, 1841 (Copyholds) | 72 |
| (Curtesy) | 84 |
| (Dower and Freebench)..... | 109 |
| (Enfranchisement of Copyholds)..... | 117, 118 |
| (Mines and Minerals)..... | 215 |
| c. 45, Sewers Act, 1841 (Rates and Taxes) | 257 |

STATUTES REFERRED TO.

xxxi

PAGE

5 Vict.

- c. 5, Court of Chancery Act, 1841 (Distringas and Stop Orders) 105**

5 & 6 Vict.

- | | |
|---|-----|
| c. 35, Income Tax Act, 1842 (Rates and Taxes) | 258 |
| c. 44, Licensing Act, 1842 (Public House) | 254 |
| c. 54, Tithe Act, 1842 (Tithe Rentcharge) | 319 |

7 & 8 Vict.

- | | |
|---|-----|
| c. 66, British Nationality Act, 1844 (Aliens) | 23 |
| (Wills)..... | 350 |

- | | |
|---|----------|
| c. 76, An Act to Simplify the Transfer of Property— | |
| (Contingent Remainders) | 64 |
| (Conveyances)..... | 65 |
| (Feoffments) | 140 |
| (Insanity)..... | 158 |
| (Leasehold Property) | 179, 180 |
| (Merger) | 214 |
| (Mortgaged Estates, Devolution of, upon Death of Mortgagee)..... | 218 |
| (Mortgages)..... | 225 |
| (Partition) | 245 |
| (Release) | 265, 266 |
| (Spes Successionis)..... | 302 |
| (Trustees, Sales and Mortgages by) | 334 |

8 & 9 Vict.

- | | |
|--|---------------|
| c. 18, Lands Clauses Consolidation Act, 1845— | |
| (Grant)..... | 151 |
| (Superfluous Lands) | 311, 312, 313 |

- c. 20, Railways Clauses Consolidation Act, 1845 (Mines and Minerals)..... 215

- | | |
|---|----------|
| c. 106, Real Property Act, 1845— | |
| (Acknowledgments) | 6 |
| (Contingent Remainders) | 64 |
| (Conveyances) | 65, 67 |
| (Disclaimer) | 103 |
| (Equitable Estates) | 127 |
| (Feoffments)..... | 139, 140 |
| (Grant)..... | 151 |
| (Insanity) | 158 |
| (Leasehold Property) | 179, 180 |
| (Married Women) | 210 |
| (Merger) | 214 |
| (Mortgaged Estates, Devolution of, upon Death of Mortgagee)..... | 218 |
| (Mortgages)..... | 225 |
| (Partition) | 245 |
| (Release) | 265, 266 |
| (Spes Successionis)..... | 302 |
| (Trustees, Sales and Mortgages by) | 334 |

- | | |
|---------------------------------------|-----|
| c. 112, Satisfied Terms Act, 1845— | |
| (Reconveyance) | 260 |
| (Terms Attendant and Satisfied) | 317 |

| | PAGE |
|---|------------------------|
| 8 & 9 Vict. (<i>continued</i>). | |
| c. 113, Evidence Act, 1845, "Lord Brougham's Act" (Act of Parliament)..... | 7 |
| c. 118, Inclosure Act, 1845 (Inclosures, Exchanges and Partitions under the Inclosure Acts) | 155, 156 |
| 9 & 10 Vict. | |
| c. 101, Public Money Drainage Act, 1845 (Land Improvement Acts) | 176 |
| 10 & 11 Vict. | |
| c. 11, Public Money Drainage Act, 1847 (Land Improvement Acts)..... | 176 |
| c. 17, Waterworks Clauses Act, 1847 (Mines and Minerals)... | 215 |
| (Rates and Taxes) | 257 |
| 11 & 12 Vict. | |
| c. 70 (Fines and Recoveries) | 142 |
| c. 87, Debts Recovery Act, 1848 (Infants) | 157 |
| c. 99, Inclosure Acts, 1848 (Inclosures, Exchanges and Partitions under the Inclosure Acts) | 156 |
| c. 119, Public Money Drainage Act, 1848 (Land Improvement Acts) | 176 |
| 12 & 13 Vict. | |
| c. 106, Bankrupt Law Consolidation Act, 1849 (Bankruptcy) 37, 38 | |
| 13 & 14 Vict. | |
| c. 31, Public Money Drainage Act, 1850 (Land Improvement Acts)..... | 176 |
| c. 60, Trustee Act, 1850 (Convicts, Traitors and Felons) | 70 |
| (Insanity) | 163 |
| (Partition)..... | 245, 246 |
| (Trustees, Sales and Mortgages by)... | 329 |
| (Vesting Declarations and Orders)... | 343, 344, 345, 346 |
| 14 & 15 Vict. | |
| c. 25, Landlord and Tenant Act, 1851 (Fixtures) | 144 |
| c. 36, House Tax Act, 1851 (Rates and Taxes) | 258 |
| 15 & 16 Vict. | |
| c. 24, Wills Act Amendment Act, 1852 (Wills) | 348 |
| c. 51, Copyhold Act, 1852 (Curtesy) | 84 |
| (Dower and Freebench)..... | 109 |
| (Enfranchisement of Copyholds) 117, 118 | |
| (Mines and Minerals)..... | 215 |
| c. 55, Trustee Act, 1852 (Trustees, Sales and Mortgages by)... | 329 |
| (Vesting Declarations and Orders) ... | 343, 344, 345 |
| c. 76, Common Law Procedure Act, 1852 (Leasehold Property) 184 | |
| c. 81, County Rate Act, 1852 (Rates and Taxes)..... | 257 |
| 16 & 17 Vict. | |
| c. 34, Income Tax Act, 1853 (Rates and Taxes) | 258 |
| c. 51, Succession Duty Act, 1853 (Death Duties)..... | 86, 87, 88, 89, 90, 92 |

STATUTES REFERRED TO.

xxxiii

| | PAGE |
|---|------------|
| 16 & 17 Vict. (<i>continued</i>). | |
| c. 134, Burials Act, 1853 (Births, Marriages and Deaths)..... | 40 |
| c. clxvi., East London Waterworks Act, 1853 (Rates and Taxes) | 257 |
| 17 & 18 Vict. | |
| c. 90, Usury Laws Repeal Act, 1854 (Enrolment) | 120 |
| c. 113, Real Estate Charges Act, 1854, "Locke King's Act"— | |
| (Lien) | 194 |
| 18 & 19 Vict. | |
| (Mortgages)..... | 229 |
| c. 15, Judgments Act, 1855— | |
| (Annuities and Rentcharges) | 27 |
| (Judgments, Writs and Orders, Registra- | |
| tion of)..... | 173 |
| (Searches) | 277 |
| c. 43, Infant Settlements Act, 1855 (Infants) | 157 |
| (Settlements) | 300 |
| c. 124, Charitable Trusts Amendment Act, 1855 (Mortmain | |
| and Charitable Uses) | 232 |
| 19 & 20 Vict. | |
| c. 9, Public Money Drainage Act, 1856 (Land Improvement | |
| Acts)..... | 176 |
| c. 120, Settled Estates Act, 1856 (Entail)..... | 122 |
| 20 & 21 Vict. | |
| c. 57, Married Women's Reversionary Interests Act, 1857, | |
| "Malins' Act"— | |
| (Acknowledgment)..... | 6 |
| (Equitable Estates) | 127 |
| (Married Women) | 210 |
| c. 77, Court of Probate Act, 1857— | |
| (Administrators, Sales and Mortgages by)... .. | 10 |
| (Leasehold Property) | 182 |
| (Wills) | 357 |
| c. 85, Matrimonial Causes Act, 1857— | |
| (Divorce) | 106 |
| (Judicial Separation and Protection Orders)..... | 174, 175 |
| (Wills) | 349 |
| 21 & 22 Vict. | |
| c. 25, Births and Deaths Registration Act, 1858 (Births, Mar- | |
| riages and Deaths)..... | 39 |
| c. 33, County Rate Act, 1858 (Rates and Taxes)..... | 257 |
| 22 & 23 Vict. | |
| c. 35, Law of Property Amendment Act, 1859 (Lord St. | |
| Leonards' Act)— | |
| (Agents) | 16 |
| (Annuities and Rentcharges) | 25, 26, 27 |
| (Appointments) | 30 |
| (Appportionment)..... | 33 |
| (Charges by Will) | 49, 50 |
| (Conveyances)..... | 66 |
| (Deeds)..... | 99 |
| (Descent) | 102 |
| (Executors, Sales and Mortgages by) | 133 |
| (Searches) | 280 |
| (Trustees, Sales and Mortgages by)..... | 333, 334 |
| c. 61, Matrimonial Causes Act, 1859 (Divorce) | 106 |

23 & 24 Vict.

c. 38, Law of Property Amendment Act, 1860—

(Judgments, Writs and Orders, Registration of)172, 173

(Searches) 280

c. 93, Tithe Act, 1860 (Tithe Rentcharge) 320

c. 125, Metropolitan Gas Act, 1860 (Rates and Taxes) 258

c. 145, Lord Cranworth's Act—

(Charges by Will) 49

(Equitable Mortgages)128, 129

(Legal Estate)..... 190

(Mortgages)220, 221, 222, 223, 224, 226

(Trustees, Sales and Mortgages by)..... 327, 332,

333, 334

24 & 25 Vict.

c. 62, Crown Suits Act, 1861 (Limitation, Statutes of) 199

c. 114, Wills Act, 1861 (Wills) 348

c. 133, Land Drainage Act, 1861 (Land Improvement Acts)... 176

c. 134, Bankruptcy Act, 1861 (Bankruptcy) 37, 38

25 & 26 Vict.

c. 53, Land Registry Act, 1862 (Appendix E) 383

c. 61, Highway Act, 1862 (Rates and Taxes) 256

c. 67, Declaration of Title Act, 1862 (Appendix E)..... 383

c. 89, Companies Act, 1862—

(Building Societies) 46

(Companies registered under the Companies Act, 1862)54, 55, 56

(Mortmain and Charitable Uses)..... 232

e. 108 (Mines and Minerals) 215

27 & 28 Vict.

c. 18, Revenue (No. 1) Act, 1864 (Rates and Taxes) 258

c. 101, Highway Act, 1864 (Rates and Taxes)..... 256

c. 112, Judgments Act, 1864 (Judgments, Writs and Orders, Registration of) 172

c. 114, Improvement of Land Act, 1864—

(Land Improvement Acts) 176

(Searches) 279

29 & 30 Vict.

c. 78, County Rate Act, 1866 (Rates and Taxes)..... 257

30 & 31 Vict.

c. 69, Real Estate Charges Act, 1867, "Locke King's Act First Amendment Act"—

(Lien).....194, 195

(Mortgages)..... 229

(Vendor and Purchaser, Bankruptcy and Death of, before completion) 339

31 & 32 Vict.

c. 4, Sales of Reversions Act, 1867 (Expectant Heirs) 137

c. 40, Partition Act, 1868 (Partition)245, 246

c. 124 (Building Societies) 44

c. 130, Artizans and Labourers Dwellings Act, 1868. (Land Improvement Acts) 177

STATUTES REFERRED TO.

XXXV

PAGE

32 & 33 Vict.

c. 41, Poor Rate Assessment and Collection Act, 1869 (Rates and Taxes) 256

c. 71, Bankruptcy Act, 1869—

(Bankruptcy) 37, 38

(Trustees, Sales and Mortgages by) 329

33 & 34 Vict.

c. 14, Naturalization Act, 1870 (Aliens) 23

(Wills) 350

c. 23, Forfeiture Act, 1870 (Convicts, Traitors and Felons) 69, 70

c. 34, Charitable Funds Investment Act, 1870 (Mortmain and Charitable Uses)..... 232

c. 56, Limited Owners' Residences Act, 1870 (Land Improvement Acts) 176

c. 93, Married Women's Property Act, 1870 (Married Women) 211

c. 97, Stamp Act, 1870 (Building Societies) 44

(Stamps) 303, 304, 305, 307, 308

c. 99, Inland Revenue Repeal Act, 1870 (Stamps) 303

34 & 35 Vict.

c. 84, Limited Owners' Residences Act (1870) Amendment Act, 1871 (Land Improvement Acts) 176

36 & 37 Vict.

c. 66, Supreme Court of Judicature Act, 1873, "The Judicature Act" (Merger) 213

37 & 38 Vict.

c. 42, Building Societies Act, 1874—

(Building Societies).....41, 42, 43, 44, 46

(Reconveyance) 260

c. 57, Real Property Limitation Act, 1874—

(Annuities and Rentcharges) 27

(Charges by Will) 52

(Dower and Freebench) 109

(Entail)..... 124

(Judgments, Writs and Orders, Registration of)..... 173

(Legal Estate)..... 189

(Limitation, Statutes of)200, 202, 203, 204

(Possessory Titles)..... 252

c. 78, Vendor and Purchaser Act, 1874—

(Age) 14

(Births, Marriages and Deaths) 39

(Consideration) 61

(Conveyances) 66

(Leasehold Property)..... 187

(Length of Title).....191, 192

(Married Women) 209

(Mortgaged Estates, Devolution of, upon Death of Mortgagee)..... 219

(Registration of Deeds and Wills)263, 264

(Tacking of Mortgages) 314

(Title Deeds and their Custody) 321

| | PAGE |
|--|-------------------------|
| 37 & 38 Vict. c. 78, Vendor and Purchaser Act, 1874 (<i>contd.</i>)— | |
| (Trust Estates, Devolution of, upon Death of Trustee) | 324 |
| (Verification of Abstract) | 340 |
| c. 88, Births and Deaths Registration Act, 1874 (Births, Mar- riages and Deaths) | 39 |
| c. 96, Statute Law Revision Act (No. 2), 1874 (Release) | 266 |
| 38 & 39 Vict. | |
| c. 36, Artizans and Labourers Dwellings Improvement Act, 1875 (Land Improvement Acts) | 177 |
| c. 55, Public Health Act, 1875 (Land Improvement Acts) ... | 177 |
| (Rates and Taxes) | 256, 259 |
| (Searches) | 279 |
| (Street Improvements) | 310 |
| c. 60, Friendly Societies Act, 1875 (Friendly Societies) ... | 147, 148 |
| (Reconveyance) | 260 |
| c. 87, Land Transfer Act, 1875— | |
| (Registration of Deeds and Wills) | 263, 264 |
| (Tacking of Mortgages) | 314 |
| (Trust Estates, Devolution of, upon Death of Trustee) | 324, 325 |
| (Appendix E) | 383 |
| c. 92, Agricultural Holdings (England) Act, 1875 (Fixtures)... | 145 |
| 40 & 41 Vict. | |
| c. 18, Settled Estates Act, 1877 (Infants) | 157 |
| (Insanity) | 161 |
| (Settled Land) | 281, 282, 294, 295, 296 |
| c. 31, Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877 (Land Improvement Acts) | 176 |
| c. 33, Contingent Remainders Act, 1877 (Contingent Re- mainders) | 65 |
| c. 34, Real Estate Charges Act, 1877 (Locke King's Act Second Amendment Act)— | |
| (Lien) | 194, 195 |
| (Mortgages) | 229 |
| (Vendor and Purchaser, Bankruptcy and Death of, before Completion) | 339 |
| c. 63, Building Societies Act, 1877 (Building Societies) | 43 |
| 41 & 42 Vict. | |
| c. 19, Matrimonial Causes Act, 1878 (Divorce) | 106 |
| 42 & 43 Vict. | |
| c. 59, Civil Procedure Act Repeal Act, 1879 (Convicts, Traitors and Felons) | 69 |
| c. 63, Artizans and Labourers Dwellings Improvement Act, 1879 (Land Improvement Acts) | 177 |
| c. 64, Artizans and Labourers Dwellings Act (1868) Amend- ment Act, 1879 (Land Improvement Acts) | 177 |
| c. 78, Supreme Court of Judicature (Officers) Act, 1879 (En- rolment) | 120 |
| 44 & 45 Vict. | |
| c. 12, Customs and Inland Revenue Act, 1881 (Death Duties) | |
| | 89, 91, 96 |

| | PAGE |
|---|--------------------|
| 44 & 45 Vict. c. 41, Conveyancing and Law of Property Act, 1881— | |
| s. 2... (Mortgages)..... | 224 |
| s. 3... (Abstract) | 5 |
| (Appointments) | 31 |
| (Conveyances)..... | 66 |
| (Covenants)..... | 80 |
| (Enfranchisement of Copyholds)..... | 119 |
| (Leasehold Property)..... | 181 |
| (Length of Title) | 192 |
| (Root of Title)..... | 275 |
| (Title Deeds and their Custody) | 321 |
| (Verification of Abstract) | 340, 341 |
| s. 4... (Administrators, Sales and Mortgages by) | 9 |
| (Executors, Sales and Mortgages by) | 135 |
| (Vendor and Purchaser, Bankruptcy and Death of, before Completion)..... | 339 |
| s. 5... (Annuities and Rentcharges)..... | 26, 28 |
| (Portions) | 250, 251 |
| s. 6... (Conveyances)..... | 67 |
| (Easements and Profits à Prendre)..... | 111 |
| s. 7... (Copyholds) | 73 |
| (Covenants)..... | 76, 77, 78, 79 |
| (Insanity)..... | 161 |
| s. 9... (Title Deeds and their Custody) | 321 |
| s. 13... (Length of Title) | 192 |
| s. 14... (Leasehold Property) | 185, 186 |
| (Mines and Minerals) | 217 |
| s. 15... (Reconveyance) | 261 |
| s. 17... (Consolidation of Mortgages) | 63 |
| s. 18... (Mines and Minerals) | 218 |
| (Mortgages) | 227, 228 |
| s. 19... (Equitable Mortgages) | 128, 129 |
| (Legal Estate)..... | 190 |
| (Mortgages) | 220, 226 |
| s. 20... (Equitable Mortgages) | 129 |
| (Mortgages)..... | 221 |
| s. 21... (Mortgages) | 221, 222, 223, 226 |
| s. 22... (Mortgages) | 223, 224 |
| s. 30... (Mortgaged Estates, Devolution of, upon Death of Mortgagee) | 219 |
| (Trust Estates, Devolution of, upon Death of Trustee) | 325, 326 |
| (Vesting Declarations and Orders) | 344, 345 |
| s. 31... (Trustees, Sales and Mortgages by) | 327 |
| s. 32... (Trustees, Sales and Mortgages by) | 328 |
| s. 34... (Trustees, Sales and Mortgages by)..... | 328, 329 |
| (Vesting Declarations and Orders)..... | 343 |
| s. 35... (Trustees, Sales and Mortgages by) | 332 |
| s. 36... (Charges by Will) | 49, 50 |
| (Mortgages)..... | 226 |
| (Trustees, Sales and Mortgages by) | 334 |
| s. 39... (Anticipation, Restraint against) | 29 |
| s. 40... (Agents) | 16 |
| s. 41... (Infants) | 157 |
| (Settled Land) | 296 |

| | PAGE |
|---|----------|
| 44 & 45 Vict. c. 41 (Conv. and Law of Property Act, 1881) (<i>contd.</i>)— | |
| s. 44... (Annuities and Rentcharges) | 25 |
| s. 45... (Annuities and Rentcharges) | 26, 27 |
| s. 46... (Agents) | 16 |
| s. 47... (Agents) | 16 |
| s. 48... (Agents) | 16 |
| s. 49... (Conveyances) | 67 |
| s. 50... (Conveyances) | 66 |
| s. 51... (Conveyances) | 68 |
| (Entail) | 121 |
| (Fee Simple) | 138 |
| (Joint Tenants) | 169 |
| s. 52... (Appointments) | 31 |
| s. 54... (Consideration) | 61 |
| s. 55... (Consideration) | 61, 62 |
| s. 56... (Consideration) | 61 |
| s. 58... (Covenants) | 79 |
| s. 59... (Covenants) | 79 |
| s. 61... (Consideration) | 62 |
| (Mortgages) | 225 |
| (Appendix B) | 372 |
| s. 63... (Conveyances) | 67 |
| s. 65... (Leasehold Property) | 186, 187 |
| s. 68... (Appendix C) | 378 |
| s. 70... (Action) | 8 |
| (Foreclosure) | 146 |
| (Order) | 241, 242 |
| (Settled Land) | 295 |
| (Vesting Declarations and Orders) | 346 |
| s. 71... (Legal Estate) | 190 |
| 44 & 45 Vict. | |
| c. 44, Solicitors' Remuneration Act, 1881 (Appendix E) | 381 |
| 45 & 46 Vict. | |
| c. 27, Highway Rate Assessment and Expenditure Act, 1882 (Rates and Taxes) | 256 |
| 45 & 46 Vict. c. 38, Settled Land Act, 1882— | |
| s. 2... (Settled Land) | 282, 290 |
| (Trustees, Sales and Mortgages by) | 330 |
| s. 3... (Enfranchisement of Copyholds) | 118 |
| (Partition) | 245 |
| (Settled Land) | 284 |
| s. 4... (Mines and Minerals) | 216 |
| (Settled Land) | 284, 285 |
| s. 5... (Settled Land) | 289 |
| s. 6... (Mines and Minerals) | 216 |
| (Mortgages) | 228 |
| (Settled Land) | 286, 293 |
| s. 7... (Mines and Minerals) | 216 |
| (Settled Land) | 286 |
| s. 8... (Settled Land) | 286, 287 |
| s. 9... (Mines and Minerals) | 216, 217 |
| (Settled Land) | 287, 288 |

STATUTES REFERRED TO.

xxxix.

| | PAGE |
|--|----------|
| 45 & 46 Vict. c. 38 (Settled Land Act, 1882) (<i>continued</i>)— | |
| s. 11... (Mines and Minerals) | 217 |
| (Settled Land) | 288 |
| s. 12... (Settled Land) | 291 |
| s. 14... (Copyholds) | 74 |
| s. 15... (Settled Land) | 290 |
| s. 16... (Settled Land) | 290 |
| s. 17... (Mines and Minerals) | 216 |
| (Settled Land) | 285, 290 |
| s. 18... (Settled Land) | 288 |
| s. 19... (Settled Land) | 291 |
| s. 20... (Copyholds) | 73 |
| (Settled Land) | 291 |
| s. 21... (Enfranchisement of Copyholds) | 118 |
| (Mines and Minerals) | 216 |
| s. 22... (Mines and Minerals) | 217 |
| (Settled Land) | 291 |
| s. 38... (Settled Land) | 290 |
| s. 39... (Settled Land) | 291 |
| s. 40... (Settled Land) | 292 |
| s. 45... (Insanity) | 163 |
| (Settled Land) | 292 |
| s. 56... (Charges by Will) | 52 |
| (Trustees, Sales and Mortgages by) | 330 |
| s. 58... (Curtesy) | 84 |
| (Entail) | 124 |
| (Settled Land) | 282 |
| s. 59... (Infants) | 157, 158 |
| (Insanity) | 162 |
| (Settled Land) | 283 |
| (Trustees, Sales and Mortgages by) | 330 |
| s. 60... (Infants) | 157, 158 |
| (Insanity) | 162 |
| (Settled Land) | 292 |
| (Trustees, Sales and Mortgages by) | 330 |
| s. 61... (Anticipation, Restraint against) | 29 |
| (Settled Land) | 292, 293 |
| s. 62... (Insanity) | 161 |
| (Settled Land) | 293 |
| s. 63... (Settled Land) | 283, 297 |
| (Trustees, Sales and Mortgages by) | 330 |
| s. 64... (Trustees, Sales and Mortgages by) | 333 |

45 & 46 Vict.

| | |
|---|----------|
| c. 39, Conveyancing Act, 1882 (Acknowledgments) | 6 |
| (Agents) | 16 |
| (Disclaimer) | 104 |
| (Equitable Mortgages) | 129 |
| (Leasehold Property) | 187 |
| (Length of Title) | 191 |
| (Mortgages) | 226 |
| (Notice) | 238, 239 |
| (Reconveyance) | 261 |
| (Searches) | 288 |
| (Trustees, Sales and Mortgages by) | 328 |

45 & 46 Vict. (*continued*).

| | |
|---|-----|
| c. 50, Municipal Corporations Act, 1882 (Rates and Taxes) ... | 257 |
| c. 54, Artizans' Dwellings Act, 1882 (Land Improvement Acts) | 177 |
| c. 75, Married Women's Property Act, 1882— | |
| (Anticipation, Restraint against) | 29 |
| (Conveyances)..... | 66 |
| (Covenants)..... | 78 |
| (Married Women) | 212 |
| (Tenants by Entireties)..... | 315 |
| (Wills) | 349 |

46 & 47 Vict.

| | |
|---|----------------|
| c. 52, Bankruptcy Act, 1883— | |
| (Bankruptcy) | 34, 35, 36, 37 |
| (Consideration) | 61 |
| (Disclaimer) | 104 |
| (Entail) | 123 |
| (Insanity) | 161 |
| (Settlements) | 298, 299, 300 |
| (Trustees, Sales and Mortgages by) | 329 |
| (Vendor and Purchaser, Bankruptcy and Death of, before Completion) | 338 |
| (Vesting Declarations and Orders)..... | 343 |
| c. 55, Revenue Act, 1883 (Stamps)..... | 306 |
| c. 61, Agricultural Holdings (England) Act, 1883— | |
| (Agricultural Holdings) | 18, 19, 20 |
| (Fixtures) | 145 |

47 & 48 Vict.

| | |
|---|-------------------------|
| c. 18, Settled Land Act, 1884— | |
| (Curtesy) | 84 |
| (Settled Land)..... | 282, 283, 292, 293, 297 |
| (Trustees, Sales and Mortgages by)..... | 330, 331 |
| c. 54, Yorkshire Registries Act, 1884— | |
| (Notice) | 239 |
| (Registration of Deeds and Wills) | 263 |
| (Tacking of Mortgages) | 314 |
| c. 71, Intestates' Estates Act, 1884 (Equitable Estates)..... | 126 |
| (Escheat) | 130 |
| c. 72, Disused Burial Grounds Act, 1884 (Burial Grounds) ... | 47 |

50 & 51 Vict.

| | |
|---|--------|
| c. 21, Waterworks (Regulation of Powers) Act, 1887. (Rates and Taxes) | 258 |
| c. 26, Allotments and Cottage Gardens Compensation for Crops Act, 1887 (Agricultural Holdings) | 18, 19 |
| c. 32, Open Spaces Act, 1887 (Burial Grounds) | 47 |
| c. 56, Friendly Societies Act, 1887 (Friendly Societies)..... | 147 |
| c. 73, Copyhold Act, 1887— | |
| (Copyholds)..... | 72 |
| (Enfranchisement of Copyholds)..... | 118 |
| (Mortgaged Estates, Devolution of, upon Death of Mortgagee)..... | 219 |
| (Trust Estates, Devolution of, upon Death of Trustee) | 326 |

STATUTES REFERRED TO.

xli

| | PAGE |
|--|--|
| 51 & 52 Vict. | |
| c. 8, Customs and Inland Revenue Act, 1888 (Stamps) ... | 303, 307 |
| c. 42, Mortmain and Charitable Uses Act, 1888— | |
| (Enrolment) | 119 |
| (Mortmain and Charitable Uses) | 231, 232, 233, 234, 235 |
| c. 43, County Courts Act, 1888 (Acknowledgment) | 7 |
| c. 51, Land Charges Registration and Searches Act, 1888— | |
| (Agricultural Holdings) | 20 |
| (Judgments, Writs and Orders, Registra- tion of) | 172, 173, 174 |
| (Land Improvement Acts) | 178 |
| (Searches) | 278, 279, 280 |
| c. 59, Trustee Act, 1888 (Agents) | 15 |
| (Limitation, Statutes of) | 203 |
| (Trustees, Sales and Mortgages by)... | 333 |
| 52 & 53 Vict. | |
| c. 7, Customs and Inland Revenue Act, 1889 (Death Duties) 88, 91 | |
| (Stamps) | 303 |
| c. 22, Friendly Societies Act, 1889 (Friendly Societies)..... | 147 |
| c. 36, Settled Land Act, 1889 (Settled Land) | 287 |
| c. 42, Revenue Act, 1889 (Stamps)..... | 303 |
| 53 & 54 Vict. | |
| c. 5, Lunacy Act, 1890 (Insanity) | 160, 161, 163 |
| (Settled Land) | 293 |
| c. 16, Working Classes Dwellings Act, 1890 (Mortmain and Charitable Uses)..... | 232, 234, 235 |
| c. 29, Intestates' Estates Act, 1890— | |
| (Descent) | 102 |
| (Intestates' Estates Act, 1890, Charges under) | 166, 167 |
| c. 39, Partnership Act, 1890 (Joint Tenants) | 170 |
| (Partnership) | 246 |
| c. 57, Tenants Compensation Act, 1890 (Agricultural Holdings) 19, 20 | |
| c. 63, Companies (Winding up) Act, 1890— | |
| (Building Societies) | 46 |
| (Companies Registered under the Companies Act, 1862) | 55 |
| c. 69, Settled Land Act, 1890— | |
| (Mines and Minerals) | 216 |
| (Mortgages)..... | 228 |
| (Settled Land) | 285, 286, 287, 288, 289, 290, 291, 294, 297 |
| (Trustees, Sales and Mortgages by)... | 327, 329, 330 |
| c. 70, Housing of the Working Classes Act, 1890 (Land Improvement Acts) | 177 |
| c. 71, Bankruptcy Act, 1890 (Disclaimer)..... | 104 |
| 54 & 55 Vict. | |
| c. 8, Tithe Act, 1891 (Tithe Rentcharge) | 319 |
| c. 39, Stamp Act, 1891 (Building Societies) | 44 |
| (Consideration) | 61 |
| (Stamps)..... | 303, 304, 305, 307, 308 |
| c. 73, Mortmain and Charitable Uses Act, 1891 (Mortmain and Charitable Uses)..... | 231, 233, 235, 236 |

| | PAGE |
|--|---------------------------------|
| 55 & 56 Vict. | |
| c. 11, Mortmain and Charitable Uses Act Amendment Act, 1892 (Mortmain and Charitable Uses) | 234 |
| c. 13, Conveyancing and Law of Property Act, 1892— | |
| (Leasehold Property) | 185, 186 |
| (Mines and Minerals) | 217 |
| (Trustees, Sales and Mortgages by)..... | 327, 328 |
| c. 57, Private Street Works Act, 1892 (Street Improvements) | 311 |
| c. 58, Accumulations Act, 1892 (Perpetuities)..... | 249 |
| 56 & 57 Vict. | |
| c. 21, Voluntary Conveyances Act, 1893 (Settlements) ... | 298, 301 |
| c. 30, Friendly Societies Act, 1893 (Friendly Societies)..... | 147 |
| c. 53, Trustee Act, 1893— | |
| (Agents) | 15, 16 |
| (Charges by Will) | 49, 50 |
| (Consideration) | 61 |
| (Convicts, Traitors and Felons) | 70 |
| (Insanity) | 162 |
| (Length of Title) | 191 |
| (Married Women) | 209 |
| (Mines and Minerals) | 215 |
| (Mortgages)..... | 226 |
| (Partition)..... | 245, 246 |
| (Partnership) | 246 |
| (Trustees, Sales and Mortgages by) ... | 327, 328, 329, 332, 333, 334 |
| (Vesting Declarations and Orders) | 343, 344, 345, 346 |
| c. 63, Married Women's Property Act, 1893 (Covenants) | 78 |
| (Wills) | 350 |
| 57 & 58 Vict. | |
| c. 10, Trustee Act (1893) Amendment Act, 1894— | |
| (Mines and Minerals) | 215 |
| (Vesting Declarations and Orders) | 345 |
| c. 30, Finance Act, 1894— | |
| (Administrators, Sales and Mortgages by).... | 9, 10 |
| (Death Duties) | 89, 90, 91, 92, 93, 94, 95 |
| (Executors, Sales and Mortgages by).... | 134, 135 |
| (Trustees, Sales and Mortgages by) | 333 |
| c. 46, Copyhold Act, 1894— | |
| (Copyholds)..... | 72 |
| (Curtesy) | 84 |
| (Dower and Freebench) | 109 |
| (Enfranchisement of Copyholds) | 117, 118 |
| (Mines and Minerals) | 215 |
| (Mortgaged Estates, Devolution of, upon Death of Mortgagee)..... | 219 |
| c. 47, Building Societies Act, 1894 (Building Societies) | 43 |
| 58 & 59 Vict. | |
| c. 16, Finance Act, 1895 (Stamps) | 308 |
| c. 26, Friendly Societies Act, 1895 (Friendly Societies)..... | 147 |

STATUTES REFERRED TO.

xliii

| | PAGE |
|--|----------|
| 59 & 60 Vict. | |
| c. 25, Friendly Societies Act, 1896 (Friendly Societies) 147, 148, 149 (Reconveyance) | 260 |
| c. 26, Collecting Societies and Industrial Assurance Companies Act, 1896 (Friendly Societies) | 147 |
| c. 28, Finance Act, 1896 (Death Duties) | 93, 94 |
| (Land Tax) | 178 |
| 60 & 61 Vict. | |
| c. 44, District Councils (Water Supply Facilities) Act, 1897 (Land Improvement Acts) | 176 |
| c. 65, Land Transfer Act, 1897— | |
| (Administrators, Sales and Mortgages by)... | 10 |
| (Appointments) | 31 |
| (Charges by Will) | 53 |
| (Death Duties) | 94 |
| (Executors, Sales and Mortgages by) | 135 |
| (Intestacy) | 165, 166 |
| (Registration of Deeds and Wills) | 264 |
| (Wills) | 357 |
| (Appendix E) | 383 |
| 61 & 62 Vict. | |
| c. 10, Finance Act, 1898 (Death Duties) | 89, 93 |
| (Stamps) | 307 |
| c. 48, Benefices Act, 1898 (Advowsons) | 12, 13 |

LIST OF ABBREVIATIONS IN REFERENCES TO TEXT BOOKS.

| | |
|-----------------------|--|
| Blackstone | Blackstone's Commentaries on the Laws of England (1st Edition). |
| Burton | Burton's Compendium of the Law of Real Property (1st Edition). |
| Co. Litt. | Coke upon Littleton (19th Edition, by Hargrave and Butler). |
| Cruise | Cruise's Digest of the Laws of England respecting Real Property (4th Edition, by White). |
| Fearne | Fearne on Contingent Remainders and Executory Devises (1st Edition). |
| Litt. | Littleton's Tenures. |
| Seton | Seton's Forms of Judgments and Orders (5th Edition). |
| Shep. Touchstone..... | Sheppard's Touchstone of Common Assurances (7th Edition, by Preston). |
| Sm. L. C. | Smith's Leading Cases (10th Edition). |
| Sugden | Sugden's Vendors and Purchasers of Estates (14th Edition). |
| Tu. L. C. | Tudor's Leading Cases on Real Property and Conveyancing (4th Edition). |
| W. & T. | White and Tudor's Leading Cases in Equity (7th Edition). |

INVESTIGATION OF TITLE.

INTRODUCTORY.

OF the many important duties performed by solicitors, none requires more skill and care than the investigation of the title to landed estates, and it is only by adopting a methodical system of perusal that even an experienced conveyancer can be sure of noticing all the points which arise upon a long abstract.

There are, it should be observed, two distinct questions to be borne in mind when perusing a title. Firstly, does the abstract show a good title? Secondly, if so, can the vendor prove the title as stated in the abstract?

Various methods of analysis have been suggested and recommended for facilitating the work of the conveyancer. The writers have in practice found it best to adopt a simple plan, which can be conveniently summed up in the following rules:—

- (1) First glance through the abstract in order to obtain a general idea of the title with which you have to deal.
- (2) Afterwards, if the length of the abstract will permit, peruse it completely at one uninterrupted sitting.
- (3) Note shortly, as you proceed, each dealing with or devolution of the legal or equitable

- interest, and in a separate column of your paper note the points which (unless subsequently disposed of) it will be necessary to further consider and make requisitions upon.
- (4) Note also events upon which the title depends, such as births, marriages and deaths, distinguishing those of which proof will be required by the requisitions.
 - (5) As any of the points referred to above are disposed of on the abstract, strike out the note relating to them.
 - (6) See that the parcels are correct, following up step by step the descriptions in the various documents abstracted.
 - (7) Where the title depends upon some event not having happened (*e.g.*, a power not having been exercised), make a requisition inquiring as to such event with a view to obtaining a negative answer, and thus casting upon the vendor the responsibility of a positive statement.

The plan recommended for adoption is illustrated in the APPENDIX B. by reference to a model abstract, followed by counsel's notes made thereon for the purpose of the preparation of opinion and requisitions.

In drawing requisitions it is convenient to have for reference a note of the subjects on which, in a title of the description being dealt with, requisitions will usually be necessary. The following suggestions embrace not only points which are, properly speaking, the subject of requisitions, but also matters which, while not strictly questions of title, are usually and conveniently inquired into by a purchaser's solicitor when sending in his requisitions.

List of usual subjects for requisitions common to various kind of property :—

Length of title.

Assent of executors to specific devise or bequest.

Identity of parcels.

Whether walls and fences party walls and fences.

Proof of births, marriages, and deaths.

Proof of state of family.

Acknowledgment by women married before 1st January, 1883.

Stamps.

Charges by will.

Death duties.

Receipt for water rate where owner and not occupier liable.

Easements.

Restrictive covenants.

Proof of wills and intestacies.

Tenancies.

Land tax.

Tithe rentcharge.

Repair of roads.

Insurance.

Enrolment of disentailing deeds.

Statutory charges.

Licence of public-houses.

Apportionment of outgoings.

Documents to be handed over.

Additional subjects peculiar to freeholds :—

Curtesy and dower.

Where intestacy after 1897, conveyance to heir-at-law necessary.

Charge under Intestates' Estates Act.

Additional subjects peculiar to copyholds :—

Custom of manor with regard to alienation and descent of property.

Customary curtesy and freebench.

Lord's consent to leases where they exist.

Fines, heriots, and other manorial rights.

Charge under Intestates' Estates Act.

Name and address of steward of manor.

Additional subjects peculiar to leaseholds :—

Original lease must be abstracted.

Lessor's licence to assign, if required.

Insurance.

Whether covenants complied with (receipt for rent).

Any notice of want of repair ?

When last painted ?

Name and address of owner of reversion.

Additional subjects peculiar to sale under Settled Land Acts :—

Are trustees trustees for purposes of Settled Land Acts ?

Has tenant incumbered his life estate ?

If principal mansion-house to be sold, have trustees consented ?

Have any terms been created under power in settlement ? If so, has any money been actually raised thereunder ?

Additional subjects peculiar to reversionary interests :—

Duties payable on death of tenant for life.

Evidence of payment of debts and legacies.

Require—

(a) Statement in writing by trustees that they have no notice of any dealing with property, and that they have no lien for costs or otherwise on trust funds ;

(b) Authority from trustees to inquire if there is any distringas.

ALPHABETICAL DIGEST.

ABSTRACT.

EVERY document and event upon which the title depends ought to be abstracted and stated in chief by the vendor at his own expense (*a*). But the expense of searching for documents not in the vendor's possession for the purpose of verifying the abstract must be borne by the purchaser (*b*).

Where on a sale of property in lots a purchaser has purchased two or more lots held wholly or partly under the same title, he has not the right to more than one abstract of the common title except at his own expense (*c*).

If the vendor does not deliver the abstract of title within the time specified in the conditions of sale, he cannot hold the purchaser bound to send in his objections and requisitions within the time limited for that purpose, even though it was stipulated in the conditions for sending in the objections that time in that respect should be of the essence of the contract (*d*).

When the abstract is not delivered the purchaser can fix a reasonable time within which the vendor shall deliver it, and failing delivery may rescind (*e*).

See VERIFICATION OF ABSTRACT.

Requisition.

Such of the deeds, wills, and deaths recited in the indenture of , 18 , as affect the property purchased must be

(*a*) *Re Ebsworth and Tidy's Contract*, 42 Ch. D. 23, p. 34; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199.

(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6); *Re Stuart and Olivant and Seadon's Contract*, (1896) 2 Ch. 328; 65 L. J. Ch. 576;

74 L. T. 450; 44 W. R. 610.

(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (7).

(*d*) *Upperton v. Nickolson*, L. R. 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733.

(*e*) *Compton v. Bagley*, (1892) 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706.

abstracted and stated in chief. Until this is done a proper abstract has not been delivered, and the purchaser therefore reserves the right to make further requisitions until 14 days after a proper abstract has been furnished.

ACKNOWLEDGMENT.

By the Fines and Recoveries Act, 1833 (*f*), a married woman was permitted by deed acknowledged to dispose of any estate which she alone, or she and her husband in her right, might have in lands of any tenure, and in money subject to be invested in land; but this power did not enable her to dispose of the legal estate in copyholds (*g*). She was also enabled by deed acknowledged to bar an estate tail (*h*).

By the Real Property Act, 1845 (*i*), the provisions of the Fines and Recoveries Act, 1833, were extended to executory interests, contingent remainders, and disclaimers. The Married Women's Reversionary Interests Act, 1857, known as Malins' Act (*k*), enabled married women to dispose of reversionary interests in personalty by deed acknowledged.

The method of acknowledgment before the 1st January, 1883, was, in general, before two commissioners (*l*), a memorandum of acknowledgment was indorsed on the deed, and the certificate of acknowledgment, which the commissioners were required to sign, was then filed in the manner directed by the Fines and Recoveries Act. Until such filing, the acknowledgment was of no validity (*m*); but on the certificate being filed the deed took effect from the time of the acknowledgment.

The proper evidence of the acknowledgment of a deed acknowledged before the 1st January, 1883, is an office copy of the certificate. By the Conveyancing Act, 1882 (*n*), one commissioner is substituted for two, and the memorandum indorsed on

(*f*) 3 & 4 Will. 4, c. 74.

(*g*) *Ibid.* s. 77.

(*h*) *Ibid.* s. 40.

(*i*) 8 & 9 Vict. c. 106, ss. 6, 7.

(*k*) 20 & 21 Vict. c. 57.

(*l*) 3 & 4 Will. 4, c. 74, s. 79.

(*m*) *Jolly v. Handcock*, 7 Ex. 820; 22 L. J. Ex. 38; 16 Jur. (O. S.) 550.

(*n*) 45 & 46 Vict. c. 39, s. 7.

the deed is made conclusive evidence of the acknowledgment. An acknowledgment may also be made before a judge of the High Court of Justice or a County Court judge (o).

As to cases in which acknowledgment is still necessary, see **MARRIED WOMEN**.

Requisition.

The memorandum of the acknowledgment by Mrs. A. B. of the deed of , 18 , must appear on the abstract, and the office copy of the certificate must be produced.

ACT OF PARLIAMENT.

At common law a statute had relation back to the first day of the Session of Parliament in which it was passed, unless some other day was appointed for its coming into operation; but by a statute passed in the reign of George III., on every Act passed after the 8th April, 1793, there is required to be indorsed the day, month, and year when the same received the royal assent, and this is the date of its coming into operation where no other commencement is provided. The law takes no notice of the fraction of a day, except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain actual priority; an Act which comes into operation on a given day becomes law as soon as that day commences (p).

Public Acts require no proof; private Acts are proved by the production of a Queen's Printers' copy (q).

ACTION.

A suit or action "is a transaction in a Sovereign Court of Justice. It is supposed all people are attentive to what passes there. . . . It is the pendency of the suit that creates

(o) 3 & 4 Will. 4, c. 74, s. 79; County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 184.

(p) The Acts of Parliament (Commencement) Act, 1793 (33 Geo. 3,

c. 13); *Tomkinson v. Bullock*, 4 Q. B. D. 280; 48 L. J. M. C. 95; 40 L. T. 459; 27 W. R. 552.

(q) 8 & 9 Vict. c. 113.

the notice" (r). Consequently, after the issue of the writ a purchaser would take subject to such rights as might be established by the action (s), but the Judgments Act, 1839 (t), now protects purchasers who have not express notice from being prejudicially affected by an unregistered *lis pendens*.

If any action is prosecuted to judgment, such judgment is, as between the parties to the action and persons claiming under them, conclusive proof of the facts which it establishes. Before 1882, a party or privy might, in all cases, displace this result by showing that the Court which gave the judgment had no jurisdiction; but now the Conveyancing Act, 1881 (u), provides that an order of the High Court of Justice shall not, *as against a purchaser*, be invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not. The section applies to all orders made before or after the commencement of the Act, except any order which had before the 1st January, 1882, been set aside or determined to be invalid on any ground, and except any order as regards which an action for having it set aside or determined to be invalid was pending at that date. The effect of this is to make valid all sales by the High Court (x); even if a mistake has been made the purchaser gets a good title, and all claims of persons interested in the estate are transferred to the purchase-money.

Judgments, orders, and other proceedings in an action are proved by the production of office copies.

See ORDER—SEARCHES.

Requisition.

As the property is being sold by the County Court, sect. 70 of the Conveyancing Act would not seem to apply.

(r) *Worsley v. Scarborough, Earl of*, 3 Atk. 392.

(s) *Price v. Price*, 35 Ch. D. 297; 56 L. J. Ch. 530; 56 L. T. 843; 35 W. R. 386.

(t) 2 & 3 Vict. c. 11, s. 7.

(u) 44 & 45 Vict. c. 41, s. 70.

(x) *Re Hall-Dare's Contract*, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556; *Mostyn v. Mostyn*, (1893) 3 Ch. 376; 62 L. J. Ch. 959; 69 L. T. 741; 42 W. R. 17; 2 R. 587.

The abstract should be amended so as to show that all the persons interested in the estate are parties to or otherwise bound by the proceedings.

ADMINISTRATOR OF CONVICT.

See CONVICTS, TRAITORS AND FELONS.

ADMINISTRATORS, SALES AND MORTGAGES BY.

Administrators derive their title from their letters of administration, and, until the grant thereof, have no title to the deceased's real or personal estate. After the grant of letters of administration their power of disposition is as follows:—

Administrators can sell, mortgage, or otherwise deal with the personal estate of the deceased even though it be specifically bequeathed, and one only of several administrators can make a title and give a good receipt to a purchaser.

Even a lapse of twenty years will not be sufficient to raise the presumption that a legal personal representative is not acting in the discharge of his duty in selling leaseholds (y).

Where, at the death of a person who died after the 31st December, 1881, there was a subsisting contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs general in any land, his administrators have power to convey the land for all the estate and interest vested in him at his death in any manner proper for giving effect to the contract (z).

Under the Finance Act, 1894 (a), when the death took place on or after the 2nd August, 1894, an administrator may sell or mortgage any of the personal property over

(y) *Re Venn and Furze's Contract*, (1894) 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440; 8 R. 220.

(z) C. A., 1881 (44 & 45 Vict. c. 41), s. 4.

(a) 57 & 58 Vict. c. 30, ss. 6, 9, and 22.

which the deceased had a general power of appointment, whether such power was exerciseable *inter vivos* or by will, and when estate duty is payable in respect of any other property passing on such death, and the persons accountable for such duty request the administrator to pay the same, he has power to sell and mortgage such property whether it be realty or personalty (*b*).

Under the Land Transfer Act, 1897 (*c*), where death takes place after the 31st December, 1897, the real estate vested in the deceased, and any real estate over which he exercised by will a general power of appointment, vests in the legal personal representative as if it were a chattel real, and he can consequently sell, mortgage, or otherwise deal with it; but this does not apply to land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant (*d*). Some or one only of several administrators cannot, however, sell or transfer real estate without the authority of the Court (*e*).

An administrator has no power to dispose by will of property vested in him as legal personal representative of a deceased person; such property passes by survivorship to the other administrators, if any, and on the decease of the last administrator fresh letters of administration *de bonis non* must be taken out.

An administrator does not succeed to any property which the deceased held as legal personal representative.

The appointment of administrator is proved by production of the letters of administration or by an official certificate of the grant (*f*).

See MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATE, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

(*b*) 57 & 58 Vict. c. 30, ss. 6, 9, and 22.

(*c*) 60 & 61 Vict. c. 65, s. 1 (1) (5).

(*d*) *Ibid.* s. 1 (4).

(*e*) *Ibid.* s. 2 (2).

(*f*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 69.

Requisitions.

1. *The letters of administration granted to the vendor must be produced.*

2. *The letters of administration granted to A. B. durante minore ætate are only granted to him until one of the children of the deceased attained twenty-one. It must be proved that this event has not yet happened.*

ADMITTANCE.

See COPYHOLDS.

ADVERSE POSSESSION.

See LIMITATION, STATUTES OF—POSSESSORY TITLE.

ADVOWSONS.

An advowson is the perpetual right of presentation to an ecclesiastical benefice. It is real property, and should be carefully distinguished from the right of presentation on the next vacancy, usually called a next presentation, which is personal property (*g*).

Strictly speaking, the proper title to show to an advowson is 100 years. The abstract should be accompanied by a list of the presentations for that period, so as to show that the enjoyment has gone along with the title. Having regard, however, to the provisions of the Real Property Limitation Act, 1833 (*h*), a purchaser may with safety take a title for any period during which three clerks in succession have held

(*g*) *Rennell v. Bishop of Lincoln*, 7 Barn. & Cres. 113, at p. 147; 9 Dowl. & Ry. 810; 5 L. J. (O. S.) K. B. 320; 1 Cl. & F. 527; 8 Bing.

490; 1 M. & Scott, 683; 7 Bligh, (N. S.) 241.

(*h*) 3 & 4 Will. 4, c. 27, s. 30.

the benefice if the aggregate of such incumbencies amounts to sixty years; and if such time does not amount to sixty years, then such further time as with the aggregate time of such incumbencies makes up the period of sixty years.

The statutory offence of simony originates with 31 Eliz. c. 6. Under this Act, if any person for a consideration presents to a benefice the presentation is void, and the right for that turn is forfeited to the Crown.

Although the sale of a next presentation when the benefice is vacant is not, it appears, simony, it is void at common law (*k*); but the sale of an advowson under such circumstances is not void, though it will not confer on the purchaser the right of presenting for the vacant turn (*k*).

A purchase of a next presentation made with the intention of presenting a particular person is simoniacal if the incumbent is at the point of death, but a purchase without any such intention is under similar circumstances valid. A next presentation cannot be purchased by a clergyman for the purpose of presenting himself (*l*). This applies, it should be observed, only to next presentations, and not to advowsons, and it is therefore lawful for a clergyman to purchase an estate for life in an advowson with a view to presenting himself (*m*). All transfers *inter vivos* of advowsons or next presentations made after the 31st December, 1898, are void unless the whole interest of the transferor is transferred (*n*), and an agreement to make such a void transfer is itself void (*o*). But a life interest may be reserved to the settlor in a family settlement, and a right of redemption may be reserved in a mortgage (*p*). Transfers *inter vivos* made after 1898 are void unless registered in the diocesan register within one month from the date of transfer or such extended time as the bishop may allow, and are also void unless more

(*k*) *Bishop of Lincoln v. Wolferstan*, 1 Bla. W. 490; 3 Burr. 1504; 2 Wils. 174.

(*l*) 13 Anne, c. 13, s. 2.

(*m*) *Walsh v. Bishop of Lincoln*, L. R. 10 C. P. 518; 44 L. J. C. P.

244; 32 L. T. 471; 23 W. R. 829.

(*n*) The Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 1 (1).

(*o*) *Ibid.* s. 1 (6).

(*p*) *Ibid.* s. 1 (7).

than twelve months have elapsed since the last institution or admission to the benefice (*q*).

Any agreement made after 1898 for any exercise of a right of patronage of a benefice in favour of any particular person, and any agreement on the transfer *inter vivos* of an advowson or next presentation for the re-transfer of the right or for postponing payment until a vacancy, or for more than three months, or for payment of interest until a vacancy, or for more than three months, or for any payment in respect of the date at which a vacancy occurs, or for the resignation of a benefice in favour of any person, is void (*r*). All these provisions with respect to transfers *inter vivos* apply to agreements for such transfers, but do not apply to transfers by operation of law, or to transfers on the appointment of new trustees where no beneficial interest passes (*s*).

No spiritual person can sell any advowson or right of presentation belonging to him by virtue of his office (*t*).

Requisitions.

1. *Some deed or document dealing with the whole advowson and forming a proper root of title must be abstracted. The purchaser cannot accept a mere presentation as evidence that the vendor is entitled to the advowson in fee simple.*

2. *Proper evidence as to the age of the present incumbent must be furnished to the purchaser.*

AFTER-ACQUIRED PROPERTY.

See BANKRUPTCY—SETTLEMENTS.

(*q*) Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 1 (1).

(*r*) *Ibid.* s. 1 (3).

(*s*) *Ibid.* s. 1 (6).

(*t*) The Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), s. 42.

AGE, EVIDENCE OF.

The age of a person is proved by showing the date of his birth. This may in general be done by certificate obtained from the proper registry. Where this cannot be obtained, a certificate of baptism will prove that the person was born at the date of the baptism, and the statement of the date of birth contained in the baptismal certificate, when supplemented by declarations as to the date of birth by members of the family, may be safely accepted by a purchaser (*u*).

When the actual date of birth is of vital importance to the title, it would seem that an uncorroborated declaration need not be accepted (*x*).

Recitals in deeds twenty years old at the date of the contract must be taken to be sufficient evidence of date of birth as of other facts and matters (*y*).

See BIRTHS, MARRIAGES, AND DEATHS.

Requisition.

It seems that under the will of the testator A. B., the vendor does not become absolutely entitled to the property sold until he attains the age of twenty-five. Proper evidence that he has attained this age must be supplied to the purchaser.

AGENTS.

Persons, instead of themselves executing documents, may, and sometimes do, appoint agents to do so on their behalf. Where an instrument is employed in the appointment of such an agent it is called a power or letter of attorney.

An agent appointed to execute a deed must be appointed by deed (*z*). In other cases at common law an agent could be appointed without any special formality; but agents

(*u*) *Re Turner, Glenister v. Harding*,
29 Ch. D. 985; 54 L. J. Ch. 1089;
53 L. T. 528.

(*x*) *Haines v. Guthrie*, 13 Q. B. D.
818; 53 L. J. Q. B. 521; 51 L. T.

645; 33 W. R. 99; 48 J. P. 756.

(*y*) Vendor and Purchaser Act,
1874 (37 & 38 Vict. c. 78), s. 2, r. 2.

(*z*) Co. Litt. 48 b.

authorized to sign instruments creating or assigning leases and other interests in land must, by the Statute of Frauds (*a*), be appointed in writing.

In construing a power of attorney the question is, What acts does the document, when fairly read, authorize the attorney to do? Where the instrument gave express power to the attorney to purchase and sell goods, to charter vessels, and to employ agents and servants, and proceeded, "and for the purposes aforesaid, or any of them, to use the name of the company and to execute and perform any other act, matter, or thing whatsoever which ought to be done, executed or performed, or which, in the opinion of the said agent or attorney, ought to have been done, executed, or performed in or about the business affairs of the company," it was held that the general words did not confer upon the agent powers at large with respect to the business affairs referred to, such as to borrow money on behalf of the company or to bind the company by a contract of loan, but only gave him such powers as might be necessary in addition to those previously specified to carry into effect the declared purposes of the power of attorney (*b*).

A trustee may appoint an attorney to execute a deed, but the power must have reference to a particular transaction. He may not give a general power of attorney authorizing his agent to execute instruments, as it would be a delegation of his duty (*c*); and though a trustee may give his solicitor authority to receive trust money when the trust money is payable on or after the 24th December, 1888 (*d*), he cannot give his solicitor a general power to give receipts (*c*).

Prior to the 1st January, 1882, a married woman was incapable of executing a power of attorney (*e*), but on and after that date she has been able, whether an infant or not, to appoint by deed an attorney on her behalf for the purpose

(*a*) 29 Car. 2, c. 3, ss. 1, 3.

(*b*) *Bryant, Powis, and Bryant v. La Banque du Peuple*, (1893) A. C. 170, at p. 179; 62 L. J. P. C. 68; 68 L. T. 546; 41 W. R. 600; 1 R. 336.

(*c*) *Re Hetling and Merton's Con-*

tract, (1893) 3 Ch. 269; 62 L. J. Ch. 783; 69 L. T. 266; 42 W. R. 19; 2 R. 543.

(*d*) 51 & 52 Vict. c. 59, s. 2; 56 & 57 Vict. c. 53, s. 17.

(*e*) *Kenrick v. Wood*, L. R. 9 Eq. 333; 39 L. J. Ch. 92; 19 W. R. 57.

of executing any deed or doing any act which she might herself do (*g*). With this exception, a power of attorney given by an infant is void.

Documents executed under a power of attorney are usually executed in the name of the donor, but as regards such documents executed after the 31st December, 1881, the donee of a power may exercise it in his own name or that of the donor at his option (*h*).

At common law a power of attorney was, unless given for valuable consideration, liable to be revoked by the act of the donor, or his bankruptcy or lunacy, or, in the case of a female, by her marriage, and it was also revoked by the death of the donor, whether given for valuable consideration or not; but attorneys acting under a power without notice of its revocation are protected by statute (*i*). After the 31st December, 1882, a power of attorney given for valuable consideration can be made irrevocable in favour of a purchaser (*k*), and such a power is not revoked by the death, marriage, lunacy, or bankruptcy of the donor, or by any act done by him without the concurrence of the donee, and whether given for valuable consideration or not, it can be made irrevocable in favour of a purchaser for a fixed period not exceeding a year from the date of the instrument, and a power so made is not revoked by any act done within the fixed period by the donor without the concurrence of the donee, nor by the death, marriage, lunacy, or bankruptcy of the donor within that period (*l*).

An instrument creating a power of attorney can be deposited in the Central Office. It can there be inspected, and an office copy, which is made sufficient evidence of its contents, can be obtained (*m*).

A power of attorney cannot be assigned, and ceases at the death of the donee of the power, whether given for valuable consideration or not.

(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 40.

(*h*) *Ibid.* s. 46.

(*i*) *Ibid.* s. 47; 22 & 23 Vict. c. 35, s. 26; 56 & 57 Vict. c. 53, s. 23.

(*k*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.

(*l*) *Ibid.* s. 9.

(*m*) 44 & 45 Vict. c. 41, s. 48.

Requisitions.

1. *The power of attorney given to the mortgagee to convey the last day of the term was given to him before 1st January, 1883. It must be shown that the mortgagor is still alive, and that the power has not been revoked.*

2. *The power to sell his real estates given by Mr. to his agent in England is not given for valuable consideration, and is not expressed to be irrevocable for a fixed time. The purchaser must be satisfied that Mr. is still alive, and that the power has not been revoked.*

AGREEMENTS.

Agreements of which a purchaser has notice must not be neglected if they are in writing (n) and relate to the land sold; as they will be binding upon him in equity unless they are voluntary. It is not usual for the agreement in writing upon which a more formal document is founded to be recited or abstracted. Where, however, a recital shows that such an agreement in writing exists, it must be required to be abstracted in chief, and any variation between its terms and the subsequent document should be noticed and a requisition made thereon.

Requisitions.

1. *It appears from the recital in the conveyance to the vendor that there was a preliminary contract in writing between his predecessor in title and himself, the terms of which do not seem to have been fully complied with. As the purchaser has notice of this agreement, it must be abstracted in chief or a copy supplied.*

2. *The post-nuptial settlement of 18, was made in pursuance of an ante-nuptial agreement. This agreement must be abstracted in chief.*

(n) Statute of Frauds (29 Car. 2, c. 3), s. 4.

AGRICULTURAL HOLDINGS.

The Agricultural Holdings Act, 1883 (*l*), applies to any parcel of land held by a tenant (*m*) which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden (*n*). It does not apply to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord (*n*).

The Act gives to agricultural tenants the right against their landlords to compensation (1) for certain improvements made with the landlord's previous consent in writing (*o*), and (2) for other improvements for which consent is not necessary (*p*), as to one of which last, however, viz., drainage, notice to the landlord is necessary previous to the work being done (*q*), and on such notice being given the landlord may execute the work himself and charge the tenant with interest not exceeding £5 per cent. on the outlay or such annual instalments payable for a period of twenty-five years and recoverable as rent as will repay the amount and interest at £3 per cent. (*r*).

The Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*s*), applies to parcels of land of not more than two acres held by a tenant under a landlord, and cultivated as a garden or as a farm, or partly as a garden and partly as a farm, and to allotments attached to cottages (*t*). It gives the tenant on the expiration of his tenancy the right against his landlord to compensation for growing crops and fruit, fruit trees and bushes planted with the consent in writing of the landlord (*u*), and for labour expended and manure applied since the taking of the last crop (*x*), and for drains, out-buildings, pigsties, fowl houses and other structural

(*l*) 46 & 47 Vict. c. 61.

(*m*) *Ibid.* s. 61.

(*n*) *Ibid.* s. 54.

(*o*) *Ibid.* ss. 1, 3.

(*p*) *Ibid.* s. 1.

(*q*) *Ibid.* s. 4.

(*r*) *Ibid.* s. 4.

(*s*) 50 & 51 Vict. c. 26.

(*t*) *Ibid.* s. 4.

(*u*) *Ibid.* s. 5 (a).

(*x*) *Ibid.* s. 5 (b).

improvements made with the consent in writing of the landlord (*y*).

No claim for compensation is allowed under the Agricultural Holdings Act, 1883, for anything in respect of which a claim for compensation is made under the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and when the provisions of the two Acts conflict, those of the last-mentioned Act are to prevail (*z*). Neither of the Acts can be excluded by agreement (*a*).

The Act of 1883 substitutes, in the case of an agricultural tenancy from year to year, a year's notice expiring with the year of tenancy for the usual half-year's notice, unless the landlord and tenant otherwise agree in writing (*b*).

Both the above-mentioned Acts are amended by the Tenants' Compensation Act, 1890 (*c*), which applies to tenancies whenever created, and provides that where a person occupies land under a contract of tenancy with the mortgagor which is not binding on the mortgagee of such land, then the occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would, but for the mortgagee taking possession, be due to the occupier from the mortgagor, whether under the Acts or the custom of the country or agreement sanctioned by the Acts; and sums due for compensation and costs may be set off against rent or other sums due from the occupier in respect of the land, and recovered as compensation under the principal Acts (*d*).

In the case of a tenancy from year to year, or for a term of not exceeding twenty-one years at a rack rent, the mortgagee must give the occupier six months' notice before depriving him of possession otherwise than in accordance with the contract of tenancy, and the occupier is entitled to compensation for crops and expenditure so far as not exhausted (*e*).

Notice of a tenancy being notice of the terms of the lease or agreement creating it, a purchaser having such notice is

(*y*) 50 & 51 Vict. c. 26, s. 5 (*c*).

(*z*) *Ibid.* s. 18.

(*a*) 46 & 47 Vict. c. 61, s. 55;
50 & 51 Vict. c. 26, s. 5.

(*b*) 46 & 47 Vict. c. 61, s. 33.

(*c*) 53 & 54 Vict. c. 57.

(*d*) *Ibid.* s. 2 (1).

(*e*) *Ibid.* s. 2 (2).

considered as having notice of the whole extent of the tenant's interest, and is therefore bound to inquire as to his rights against the vendor (*g*).

Inasmuch as a purchaser will be liable at the termination of the tenancy (*h*) to pay compensation for, amongst other things, erections which he might fairly assume to have been put up by the vendor, it follows that on a purchase of agricultural allotment or cottage garden land, in addition to inquiries as to the existence of the charges referred to below, inquiry should be made with a view to ascertaining (1) whether any claims under the Acts have been made which are undisposed of, (2) whether any notices have been given in respect of any of the matters referred to in the Acts, and (3) whether any, and what, improvements under the Acts are known to have been effected. A cautious purchaser will, indeed, make these inquiries before entering into his contract, but in any case, although not strictly a question of title, it is necessary for the purchaser to obtain the information some time, and it is convenient to do so, before completion.

An order of the County Court may be obtained charging the expense of improvements under the Act on the land (*i*). No register was formerly kept of these charges, but charges under sect. 29 must now be registered under the Land Charges Registration and Searches Act, 1888 (*k*); as also must charges under sect. 31 when made in respect of improvements to which the consent of the landlord is required or of drainage (*l*). There is always some danger of charges created before this Act came into operation (*m*), and not subsequently assigned and registered (*n*), being overlooked. This is of no importance where the land is sold by the landlord in whose favour the charge was made, as a conveyance by him will vest the land in the purchaser free from the charge, but in the case of a sale after the death of such landlord, or after he had transferred the charge, no such

(*g*) *James v. Lichfield*, L. R. 9 Eq. 51; 39 L. J. Ch. 248.

(*h*) 46 & 47 Vict. c. 61, s. 1.

(*i*) *Ibid.* ss. 29—32.

(*k*) 51 & 52 Vict. c. 51, ss. 4, 5.

(*l*) 53 & 54 Vict. c. 57, s. 3.

(*m*) January 1st, 1889.

(*n*) 51 & 52 Vict. c. 51, s. 13.

protection exists; the vendor may himself be unaware of its existence. Inquiry should therefore be made from the legal personal representatives of each deceased tenant for life as to their knowledge of the existence of any such charge.

See FIXTURES—LAND IMPROVEMENT ACTS.

Requisitions.

1. *Is the vendor, or are his solicitors, aware of any charge under sects. 29—32 of the Agricultural Holdings Act having been made in favour of any former landlord of the property? Will the vendor's solicitors, if they are able, supply the names and addresses of (a) the legal personal representatives of the last tenant for life, (b) the former tenant of the premises, in order that inquiries may be made of them on the point?*

2. *Has any claim been made by the tenant for compensation in respect of any matters or things on the farm?*

3. *Have any claims by tenants under the Agricultural Holdings Act or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, been made which are not disposed of?*

4. *What (if any) improvements under the Agricultural Holdings Act, or other matters giving rise to compensation to tenants, are the vendors or their solicitors aware of?*

ALIENATION, RESTRAINT ON.

If a feoffment be made upon this condition—"that the feoffee shall not alien the land to any, this condition is void" (o), and any condition in a conveyance which substantially has that effect is also void, and a vendor can make a good title notwithstanding such condition (p). The case, however, of property settled on a married woman is an exception.

(o) Co. Litt. 222 a.

(p) *Bradley v. Peiroto*, 4 R. R. 7; 3 Ves. jun. 324; Tu. L. C. 514.

to this rule, and such property may be subject to a restraint on alienation while the coverture lasts. Another qualification is that an estate for life or years may be given until alienation or bankruptcy of the donee, with a gift over on the happening of such event (*p*); but such a settlement of a man's own property is void against his trustee in bankruptcy (*q*), though a limitation over in the event of an involuntary alienation by process of law, such as the appointment of a receiver on behalf of a judgment creditor, is valid (*r*); and in the case of a limitation in remainder or reversion, a gift over upon alienation before the period of possession is valid (*s*). A condition merely limiting the power of alienation, *e.g.*, a gift on the condition that A. never sells out of the family, is valid (*t*).

It should be noticed that gifts over on alienation and restraints upon alienation are always void if they infringe the rule against perpetuities.

See ANTICIPATION, RESTRAINT AGAINST—PERPETUITIES.

Requisitions.

1. *What evidence does the vendor offer that the prior estate of A. B. was determined by his being deprived of the enjoyment within the words of the will of X., deceased?*

2. *The proposed mortgage would, it seems, put an end to the life estate of A. B.; unless, therefore, he can obtain the concurrence of Mrs. B., the person entitled in remainder, the proposed advance cannot be made.*

3. *As there is a gift over to A. B. on alienation by the vendor, it is presumed that A. B. will concur in the sale. Does A. B. take any portion of the purchase-money?*

(*p*) *Higinbotham v. Holme*, 19 Ves. jun. 88; 12 R. R. 146.

(*q*) *Re Pearson, Ex parte Stephens*, 3 Ch. D. 807; 35 L. T. 68; 25 W. R. 126.

(*r*) *Re Detmold, Detmold v. Detmold*, 40 Ch. D. 585; 58 L. J. Ch. 495; 61 L. T. 21; 37 W. R. 442.

(*s*) *Kearsley v. Woodcock*, 3 Ha. 185; 8 Jur. (O. S.) 120; *Re Payne*, 25 Beav. 556; *Pearson v. Dolman*, L. R. 3 Eq. 315; 36 L. J. Ch. 258; 15 W. R. 120.

(*t*) *Re Macleay*, L. R. 20 Eq. 186; 44 L. J. Ch. 441; 32 L. T. 682; 23 W. R. 718.

ALIENS.

At common law aliens were not capable of inheriting or holding any estate or interest in lands, and if any lands were purchased by an alien, the Crown was entitled to seize them. The rule applied to equitable as well as legal estates (*u*). The child of foreign parents born in England is not an alien, and the privileges of a natural-born subject have been by statute extended to (1) children born abroad of natural-born fathers; (2) the children of males whose fathers were natural born; (3) the children of natural-born mothers; and (4) the wives of natural-born or naturalized subjects (*x*).

An alien could be made a denizen by letters patent, whereupon he became capable of holding, but not of inheriting, land.

Since the 6th August, 1844, aliens have been able to hold land for a lease not exceeding twenty-one years for the purpose of occupation or business (*y*), and now, since the 12th May, 1870, they have, as regards holding land, been upon an equality with natural-born subjects (*z*).

An alien is, however, still under some incapacities; thus, he cannot be made a protector of a settlement (*a*).

The effect of naturalization is to make the person naturalized a British subject, and he is thenceforth subject to no disability whatever.

Naturalization prior to the Act of 1870 is proved by certificate of a Secretary of State (*y*).

Requisitions.

1. *Was Mr. Müller, the predecessor in title of the vendor, an alien? If so, was he ever naturalized?*

2. *A certificate of the naturalisation of Herr Braun from a Secretary of State must be produced.*

3. *Jean Legendre must join in the conveyance to the pur-*

(*u*) *Sharp v. St. Sauveur*, L. R. 7 Ch. 343; 41 L. J. Ch. 576; 26 L. T. 142; 20 W. R. 269.

(*x*) 4 Geo. 2, c. 21; 13 Geo. 3, c. 21; 7 & 8 Vict. c. 66; 33 & 34

Vict. c. 14.

(*y*) 7 & 8 Vict. c. 66.

(*z*) 33 & 34 Vict. c. 14, s. 2.

(*a*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 32.

chaser to release his estate by curtesy unless the vendor can show that he was an alien at the time of his wife's death in January, 1870.

ALLOTMENTS AND COTTAGE GARDENS.

See AGRICULTURAL HOLDINGS.

ALTERATIONS.

See DEEDS—WILLS.

ANNUITIES AND RENTCHARGES.

A rentcharge is a rent payable out of land to a person who has no future interest or reversion in such land (*b*). The rent may be payable for life or other limited period, when it is usually referred to as an annuity charged on the land, or it may be perpetual, when it is called a rentcharge. Rentcharges payable out of freehold lands are common in Manchester and some other places in the north of England.

Where no express power of distress was reserved by the instrument creating a rentcharge, such power was, many years ago, given by statute (*c*); and now there is no longer any necessity to insert in an instrument creating a rentcharge any provisions for its recovery, as in the case of all instruments coming into operation after the 31st of December, 1881, the person entitled to any annual sum charged on land has, in the absence of any contrary intention expressed therein, the following remedies as far as they might have been conferred by the instrument under which the annual sum arises:—

- (1) When unpaid for twenty-one days after time appointed for payment, to enter and distrain.

(*b*) 2 Blackstone, 42.

(*c*) 4 Geo. 2, c. 28, s. 5.

- (2) When unpaid for forty days after time appointed for payment, even if no legal demand made, to enter and hold the land without impeachment of waste, and take the income until all the arrears and costs are satisfied.
- (3) In the like case to demise the land charged to a trustee for a term of years with or without impeachment of waste on trust by mortgage, sale, or demise, or receipt of income, or other reasonable means, to raise and pay the arrears and costs (*d*).

In addition to the above remedies, the owner of a rentcharge can (1) apply to the court and obtain an order to enforce the charge on the land by sale or mortgage (*e*), or (2) sue the terre-tenant for the amount owing. With regard to the last-mentioned remedy, it is to be observed that the liability of subsequent owners of the land charged does not arise by reason of the covenant for payment running with the land, as the law on the subject of covenants running with the land does not apply; the ground on which such subsequent owner is liable is as the pernor of the profits of the land; he was formerly liable to a real action for non-payment of the rentcharge, and now, since real actions are abolished, he is liable to an action for debt (*f*), and it would seem that subsequent owners are equally liable even if the profits are insufficient to keep down the rentcharge (*g*).

A rentcharge is put an end to—

- (1) By release. Part as well as the whole of the land can now be released without prejudice to the rights of all persons interested in the lands remaining unreleased, and not concurring in or confirming the release (*h*).

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 44.

(*e*) *Horton v. Hall*, L. R. 17 Eq. 437; 22 W. R. 391; *Kelsey v. Kelsey*, L. R. 17 Eq. 495; 30 L. T. 82; 22 W. R. 433; *Scottish Widows' Fund v. Craig*, 20 Ch. D. 208; 51 L. J. Ch. 363; 30 W. R. 463.

(*f*) *Thomas v. Sylvester*, L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; 21 W. R. 912; *Searle v. Cooke*, 43 Ch. D. 519; 59 L. J. Ch. 259; 62 L. T. 211.

(*g*) *Pertwee v. Townsend*, (1896) 2 Q. B. 129; 65 L. J. Q. B. 659; 75 L. T. 104.

(*h*) 22 & 23 Vict. c. 35, s. 10.

- (2) By merger, through the person entitled to the rentcharge acquiring the land on which it is charged.
- (3) By redemption, under the Conveyancing Act, 1881 (i), under which the Board of Agriculture may fix the amount of consideration for redemption, and on proof of payment may grant a certificate, which is conclusive, declaring the land to be freed from the charge.
- (4) By discharge, under the Conveyancing Act, 1881 (k), which applies to a sale either by the court or out of court, and provides that the court may direct or allow payment into court of a capital sum to keep down the charge, and may declare the land freed from such charge (l).
- (5) By expiration, where the rentcharge has been granted for a limited period.
- (6) By the estate on which the rent is charged coming to an end. This will not, however, free the original grantor from liability.

Prior to the 13th August, 1859, if an annuitant released any part of the land from the annuity charged upon it, the whole annuity was gone so far as regards the charge on the land, but since that date the release from a rentcharge of part of the land charged therewith does not operate as a discharge of the whole land, but only of the part released (m). Where, therefore, after the 12th August, 1859, the owner of land which is subject to a rentcharge sells and conveys such land in separate portions to different persons, and the person entitled joins in the conveyance of one only of such portions and releases it from the rentcharge without the concurrence of the person to whom the other portion has been conveyed, the whole of such rentcharge is not extinguished, but only a proportionate part of it can be recovered from the person to whom the unreleased portion was conveyed (n).

(i) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 45.

(k) *Ibid.* s. 5.

(l) *Ibid.*

(m) 22 & 23 Vict. c. 35, s. 10.

(n) *Booth v. Smith*, 14 Q. B. D. 318; 54 L. J. Q. B. 119; 51 L. T. 742; 33 W. R. 142.

Annuities or rentcharges for life or any term of years determinable on life, granted otherwise than by will or marriage settlement after the 25th April, 1855, do not affect any lands as to purchasers, mortgagees, or creditors until registered (*o*); but an annuity, though unregistered, will bind a purchaser with notice (*p*).

A purchaser may rely upon a search at the proper office as far as regards life annuities and rentcharges created otherwise than by will or marriage settlement, but with regard to those created by will or marriage settlement and to all perpetual annuities and rentcharges, a purchaser can only rely upon the abstract being complete, and on the fact that the vendor or mortgagor, solicitor or agent, who conceals any instrument to the title or any incumbrance from a purchaser or mortgagee with intent to defraud is guilty of misdemeanour and also liable to an action for damages (*q*).

The period within which proceedings must be taken by action or distress to enforce payment against the land is twelve years from the last payment of rent, but no arrears of the rentcharge can be thus recovered except within six years after becoming due (*r*). These provisions do not apply to an action on a covenant to pay the annual sum, and twenty years' arrears can be recovered in a personal action against the covenantor (*s*).

See CHARGES BY WILL—DEATH DUTIES—LIMITATION, STATUTES OF—SEARCHES.

Requisitions.

1. *The land contracted to be sold is apparently, together with other land devised by the will of A. B., deceased, subject to a rentcharge of £ a year. The vendor must, at his own expense, either procure a release of the part of the land in question or redeem the rentcharge under the Conveyancing Act, 1881, s. 45.*

(*o*) 18 & 19 Vict. c. 15.

(*p*) *Greaves v. Tofield*, 14 Ch. D. 563; 50 L. J. Ch. 118; 43 L. T. 100; 28 W. R. 840.

(*q*) 22 & 23 Vict. c. 35, s. 24.

(*r*) 3 & 4 Will. 4, c. 27, ss. 3, 42;

37 & 38 Vict. c. 57, s. 1.

(*s*) 3 & 4 Will. 4, c. 42; *Strachan v. Thomas*, 12 Ad. & E. 536; 4 Per. & D. 229.

2. *The receipt for the last payment of the rentcharge subject to which the land is sold must be produced.*

3. *The certificate of the Board of Agriculture declaring the land freed from the rentcharge created by the indenture of , 18 , must be abstracted in chief and produced.*

4. *The order for redemption of the annuity of £ must be abstracted in chief and the original or office copy order and certificate of payment must be produced.*

5. *Who is the legal personal representative of A. B., the annuitant? The receipt for the last payment of A. B.'s annuity and for the apportioned part of the annuity up to the date of A. B.'s death must be produced.*

6. *Either Mrs. C. D. must release her annuity or application must be made to the court, under the provisions of section 5 of the Conveyancing Act, 1881, to have the land declared freed from the incumbrance, and the succession duty which will be payable at Mrs. C. D.'s death must be provided for.*

7. *Is the annuitant A. B. alive or dead? If alive, he must join in the conveyance to release his annuity. If dead, his death must be proved in the usual way.*

8. *The annuity of £ charged on the property must be apportioned, and so much thereof as accrued prior to the date fixed for completion must be paid by the vendor.*

ANTE-NUPTIAL SETTLEMENTS.

See SETTLEMENTS.

ANTERIOR TITLE.

See ROOT OF TITLE.

ANTICIPATION, RESTRAINT AGAINST.

It is only in the case of the equitable or statutory separate estate of a married woman, and while she is actually covert, that any restraint against anticipation is allowed by law. A gift of property to a woman for her separate use without power of anticipation prevents her from alienating either the corpus or the income during any coverture. Prior to the Married Women's Property Act, 1882 (*s*), a restraint against anticipation of income given to a married woman was of no avail, unless the income was given to her for her separate use, and a gift to her separate use was not implied from the mere existence of a restraint against anticipation (*t*).

Since the 31st December, 1881, the Court, notwithstanding that a married woman is restrained from anticipation, has had power with her consent to bind her interest in any property (*u*).

A restraint against anticipation does not prevent the disposition of the property by will, nor the exercise by a married woman of any power under the Settled Land Acts (*x*), and it is put an end to by divorce or judicial separation (*y*).

See ALIENATION, RESTRAINT ON.

Requisitions.

1. *Mrs. A. B., one of the vendors, is restrained from anticipating her interest in the property sold. It is presumed that she is a widow, and that she has not married again. The death of her husband must be proved.*

2. *Mrs. C. D. must join in the mortgage, and an order must be obtained under the Conveyancing Act binding her interest notwithstanding the restraint on anticipation.*

APPOINTMENT OF PERSON TO CONVEY.

See VESTING ORDERS AND DECLARATIONS.

(*s*) 45 & 46 Vict. c. 75.

(*t*) *Stogdon v. Lee*, (1891) 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467.

(*u*) 44 & 45 Vict. c. 41, s. 39.

(*x*) 45 & 46 Vict. c. 38, s. 61 (6).

(*y*) *Munt v. Glynes*, 41 L. J. Ch. 639; 27 L. T. 366; 20 W. R. 823.

APPOINTMENT OF TRUSTEES.*See* TRUSTEES.**APPOINTMENTS.**

As to the execution of powers of appointment, whether general or special, the common law rule was that an intention to exercise the power must appear in the instrument by which the power was exercised, and in order to show such an intention there must be either a reference to the power or to the property subject to the power. This rule has been altered as regards general powers exercised by wills made or republished after the 31st December, 1837, wherein general devises of real estate and general bequests of personal estate are construed to include real and personal estate over which the testator has a general power of appointment (*y*).

The formalities to be observed on the execution and attestation of powers must be noticed.

- (1) *Powers exerciseable inter viros.* If exercised by any instrument before the 13th August, 1859, all the formalities required by the instrument creating the power must be observed (*z*). If exercised on or after that date, either all the formalities required by the instrument creating the power must be observed, or the power must be exercised by deed executed in the presence of and attested by two witnesses (*a*).
- (2) *Powers exerciseable by will.* If exercised by a testamentary instrument before the 1st January, 1838, all the formalities required by the instrument creating the power must be observed. If exercised by a testamentary instrument on or after that date, the instrument must be executed as a will.

In cases where a testator exercises a general power of appointment over real estate by will and dies after the

(*y*) 7 Will. 4 & 1 Vict. c. 26, s. 27. (*z*) *Hawkins v. Kemp*, 3 East, 410.
 (*a*) 22 & 23 Vict. c. 35, s. 12.

31st December, 1897, the legal estate in such real estate passes to his legal personal representative (*b*).

A married woman has always been able to exercise powers of appointment, whether by deed or will, in the same manner as if she was a *feme sole*. An infant cannot exercise over real estate a power coupled with an interest in himself, but as regards personal estate he can do so where an intention appears that the power should be exerciseable during minority (*c*).

In the case of sales made after the 31st December, 1881, a purchaser is not entitled to the production or abstract of any document dated or made before the time prescribed by law, or stipulated for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser (*d*).

Before the 1st January, 1882, powers simply collateral (that is, powers given to a person not taking any estate) could not be released; but since that date a person may by deed release or contract not to exercise a power, whether or not it be coupled with an interest (*e*); but a power coupled with a duty cannot be released (*f*).

If a deed executed for the purpose of exercising a power of appointment appoints to A. to the use of B., B. will take an equitable estate only, while the legal estate will pass to A.

A power of appointment must be exercised *bonâ fide* for the end designed, otherwise the appointment is corrupt and void and will be set aside so far as it is a fraud upon the power, but if any part of the appointment is free from the fraud it will stand good (*g*).

A power of appointment ceases on the death of the donee unless expressly given to his successor.

See DEATH DUTIES—PERPETUITIES.

(*b*) 60 & 61 Vict. c. 65, s. 1 (1), (2).

(*c*) *Re D'Angibau*, 15 Ch. D. 228; 49 L. J. Ch. 756; 43 L. T. 135; 28 W. R. 930.

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3).

(*e*) *Ibid.* s. 52.

(*f*) *Re Eyre, Eyre v. Eyre*, 49 L. T. 259; W. N. (1883) 153.

(*g*) *Aleyn v. Belchier*, 2 W. & T. 308; 1 Eden, 132.

Requisitions.

1. *The deed of appointment of , 1857, being executed before the 13th August, 1859, evidence must be adduced that it was executed with all the formalities required by the instrument creating the power.*

2. *It seems that A. B. has a power of charging the estate purchased with various sums of money. He must be a party to the conveyance and release this power.*

3. *A. B., deceased, had a power of charging the property contracted to be sold with an annuity in favour of his wife. Was this power ever exercised?*

4. *The power of appointment in the settlement of , 18 , given to A. B. requires exercising by a deed with two witnesses. This would appear to apply also to the deed releasing the power of revocation contained in the original appointment. The abstract does not show that the deed poll of , 18 , releasing the power over the vendor's share was thus executed. It will therefore be necessary for the vendor to show that the power of revocation has not been exercised, or to obtain the concurrence of A. B.*

APPORTIONMENT.

It often happens that land subject to a periodical payment is divided and sold to different purchasers, and the sum payable apportioned between the respective purchasers; it is necessary for a purchaser of any part of land so divided to see that the apportionment has been regularly made so as to bind the person in whose favour the sum is payable.

A common case in which apportionment takes place is that of tithe rentcharge, which is dealt with elsewhere (*h*). It is also frequently resorted to in the case of annuities, quit rents, customary rents payable in respect of copyhold and customary freehold property, and also in case of the rents of leasehold properties held under one lease.

(*h*) See TITHES RENTCHARGE, p. 319. . . .

After the 12th August, 1859, the release from a rentcharge of part of the hereditaments charged therewith no longer extinguishes the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments unreleased and not concurring in or confirming the release (i).

Requisitions.

1. *The apportionment between Blackacre and Whiteacre of the annuity of 100l. a year to X. Y. charged thereon by the will of A. B., deceased, must be proved by production of a deed executed by X. Y. effecting a release of Whiteacre, the premises sold, from the portion thrown upon Blackacre.*

2. *The effect of the will of A. B. was to charge all the real estate devised by him with the annuity of 500l. payable to his widow. The indenture effecting the apportionment mentioned in the particulars of sale must be produced in order to satisfy the purchaser that Mrs. B. is bound thereby.*

3. *An apportionment binding on the lord of the manor of the customary rent referred to in the particulars as the "apportioned rent" must be proved.*

4. *Both Nos. 1 and 2, Hill Terrace were comprised in the same lease. Has there been any legal apportionment binding on the lessor of the rents and other liabilities under such lease? If so, the instrument effecting the same must be produced. If not, the lessor must join in the assignment for the purpose of releasing the premises contracted to be sold from the liabilities in respect of the other premises.*

ATTENDANT TERM.

See TERMS, ATTENDANT AND SATISFIED.

(i) 22 & 23 Vict. c. 35, s. 10; 54 L. J. Q. B. 119; 51 L. T. 742; *Booth v. Smith*, 14 Q. B. D. 318; 33 W. R. 142.

ATTORNEY, POWER OF.

See AGENTS.

AWARD.

See COPYHOLDS—INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

BANKRUPTCY.

(1) *Under the Bankruptcy Act, 1883 (k).*

A receiving order does not itself divest the debtor's property (*l*), but inasmuch as all property, real or personal, belonging to or vested in a bankrupt at the commencement of the bankruptcy, or acquired by or devolving on him before his discharge, vests in the official receiver as trustee until a trustee is appointed, and then in such trustee (*m*), it follows that transactions cannot safely be completed with persons against whom receiving orders have been made.

The trustee of the property of a bankrupt can sell and give a discharge (*n*). He conveys the bankrupt's property in the same manner as an ordinary trustee conveys trust property.

The production of an office copy of the order of adjudication or of the *London Gazette* containing notice thereof, is sufficient evidence of the order having been duly made and of its date (*o*). The appointment of a trustee is proved by a certificate of the Board of Trade (*p*).

Under the Bankruptcy Act, 1883 (*q*), any settlement (by which is meant conveyance or transfer) of property not being

(*k*) 46 & 47 Vict. c. 52.

(*l*) *Rhodes v. Dawson*, 16 Q. B. D. 548; 55 L. J. Q. B. 134; 34 W. R. 240.

(*m*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20 (1), 44; *Ex parte Board of Trade, Re Parker*, 15 Q. B. D.

196; 54 L. J. Q. B. 372; 52 L. T. 670; 33 W. R. 262.

(*n*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 50.

(*o*) *Ibid.* ss. 132, 134.

(*p*) *Ibid.* ss. 138, 140.

(*q*) 46 & 47 Vict. c. 52.

(1) a settlement made before and in consideration of marriage, or (2) one made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or (3) a settlement made on or for the wife or children of the settlor of property which has accrued to him after marriage in right of his wife, is void against the trustee in the bankruptcy if the settlor become bankrupt within two years after the date of the settlement, and if the settlor become bankrupt at any subsequent time within ten years after the date of the settlement, is void unless the parties claiming under the settlement can prove that the settlor was, at the time of making it, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on its execution (*r*); but a voluntary settlement is not void against the settlor's trustee in bankruptcy from its date, but only from the time when his title accrues, so that if before that time the property comprised in the settlement has been sold *bonâ fide* to a purchaser for value, the title of the purchaser will be good as against the trustee (*s*).

Any covenant or contract in consideration of marriage for the future settlement on the settlor's wife or children of property wherein the settlor had no interest at the date of his marriage, not being property in right of his wife, is, on his becoming bankrupt before the property is actually transferred, void against the trustee in bankruptcy (*t*).

Onerous property may be disclaimed by a trustee in bankruptcy (*u*).

The trustee can exercise a general power of appointment vested in the bankrupt (*x*), and may deal with the property to which the bankrupt is beneficially entitled as tenant in tail (*y*). He may also deal with the bankrupt's copyhold

(*r*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.

(*s*) *Re Carter and Kenderdine's Contract*, (1897) 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.

(*t*) Sect. 47.

(*u*) See under DISCLAIMER at p. 104.

(*x*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (2) (ii).

(*y*) *Ibid.*, s. 56 (5).

and customary property without being admitted, and his appointee is to be admitted thereto (z).

Property held by a bankrupt upon trust for any other person does not pass to the trustee in bankruptcy (a).

When an adjudication is annulled, all sales of property by the official receiver, trustee, or court are valid, but the property of the debtor who was adjudicated bankrupt vests in such person as the court may appoint, or in default of any such appointment, reverts to the debtor on such terms and subject to such conditions, if any, as the court may declare by the order (b). This provision operates only as between the debtor on the one hand and the trustee or other person claiming title under the bankruptcy on the other, and it confers on the debtor, as from the date of annulment, a good title to his property, so that he may convey and give a good discharge without the concurrence of the trustee, but it does not affect the title of other persons claiming independently, *e.g.*, under a forfeiture clause (c).

Conveyances and assignments by bankrupts before the date of the receiving order to persons having at the time no notice of any available act of bankruptcy committed by the bankrupt before that time, and dealing *bond fide* for valuable consideration, are protected by the Act (d), even when such transactions are themselves acts of bankruptcy (e); but a purchaser who after adjudication, even without notice thereof, pays his money to the bankrupt is not protected (f); and a person who, with notice that a debtor has committed an act of bankruptcy, deals with him, does so subject to the risk of a petition being presented within three months and an adjudication ensuing.

An undischarged bankrupt cannot, even before the inter-

(z) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 50 (4).

(a) *Ibid.* s. 44 (1).

(b) *Ibid.* s. 35.

(c) *Re Metcalfe, Metcalfe v. Metcalfe*, (1891) 3 Ch. 1; 60 L. J. Ch. 647; 65 L. T. 426.

(d) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49.

(e) *Shears v. Goddard*, (1896) 1 Q. B. 406; 65 L. J. Q. B. 344; 74 L. T. 128; 44 W. R. 402.

(f) *Ex parte Rabbidge, Re Pooley*, 8 Ch. D. 367; 38 L. T. 663; 26 W. R. 646.

vention of the trustee in bankruptcy, convey real estate acquired after the bankruptcy to a *bond fide* purchaser for value so as to give a good title to such purchaser as against the trustee (*g*); but until the trustee intervenes all transactions of a bankrupt after his bankruptcy with any person dealing with him *bond fide* and for value in respect of his after-acquired leasehold property, are valid against the trustee (*h*), and the same rule applies with regard to the bankrupt's other personal estate (*i*). *110720 with real estate London & Co. contract of 1.5.2/14.12*

The discharge of a bankrupt under the Act of 1883 is proved by an office copy of the order of discharge (*k*). *1.5.2/14.12*

(2) Under former Acts.

Questions arising under Bankruptcy Acts prior to that of 1883 are becoming every year of less practical importance. Lapse of time, and in many cases recitals in documents twenty years old, obviate the necessity of inquiries which might otherwise be expedient. The Acts of 1849, 1861, and 1869 provided that the freehold and leasehold (and under the Act of 1869 copyhold) property of the bankrupt at the time of his bankruptcy, or obtained before its close, vested in the official assignee under the Act of 1849, the creditor's assignee when appointed under the Act of 1861, and the trustee when appointed under the Act of 1869, and until his appointment, in the registrar (*l*). Under the Acts of 1849 and 1861, the copyhold property of the bankrupt, though not vesting in the assignees, could be sold by the court, the sale being followed by admittance, while

(*g*) *Re New Land Development Association and Gray*, (1892) 2 Ch. 138; 61 L. J. Ch. 323; 66 L. T. 404; 40 W. R. 295.

(*h*) *Re Clayton and Barclay's Contract*, (1895) 2 Ch. 212; 64 L. J. Ch. 615; 72 L. T. 764; 43 W. R. 549; 59 J. P. 489; 13 R. 556.

(*i*) *Cohen v. Mitchell*, 25 Q. B. D. 262; 59 L. J. Q. B. 409; 63 L. T.

206; 38 W. R. 551; 7 Morrell, 207.

(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 30 and 134.

(*l*) Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), ss. 141, 142; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 117, 161; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 15, 17, 83.

under the Act of 1869 the trustee could dispose of copyholds without being admitted (*m*).

An order of adjudication was proved by production of an office copy order or a copy of the "London Gazette" containing the announcement (*n*). The appointment of official and creditors' assignees and trustee respectively, under the Acts of 1849, 1861, and 1869, was proved by an office copy certificate of appointment (*o*), and the bankrupt's discharge, in similar manner to a discharge under the Act of 1883, by production of an office copy of the order (*p*).

See VENDORS AND PURCHASERS, BANKRUPTCY AND DEATH OF, BEFORE COMPLETION.

Requisitions.

1. *The adjudication in bankruptcy of A. B., and the appointment of the vendor C. D., trustee in such bankruptcy, must be proved by the certificate of the Board of Trade of the appointment of the latter.*

2. *The settlement of , 18 , appears to have been a voluntary one, and A. B. has, it is understood, been since adjudicated bankrupt. The concurrence of his trustee in bankruptcy, or a release of such trustee's claim, must be obtained at the vendor's expense.*

3. *The conveyance of , 18 , to C. D., appears to have been executed by A. B. after the act of bankruptcy on which he was subsequently adjudicated, though before the date of the receiving order. What evidence does the vendor offer (a) that the transaction was entered into bonâ fide and*

(*m*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 22.

(*n*) Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), ss. 236, 240; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 191, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 10, 81, 107.

(*o*) Bankruptcy Act, 1849 (12 & 13

Vict. c. 106), ss. 102, 236; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 123, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 18, 107.

(*p*) Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 161, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 69, 107.

for valuable consideration? (b) that C. D. had no notice at the time of any available act of bankruptcy committed by A. B.?

4. The vendor appears to have been adjudicated bankrupt not long before the of , 18 , when the property was contracted to be sold. It must be proved that he obtained his discharge before the date referred to.

BARGAIN AND SALE.
See ENROLMENT — RELEASE.

BASE FEE.
See ENTAIL.

BIRTHS, MARRIAGES AND DEATHS.

On most abstracts appear births, marriages and deaths, which form essential links in the title. The question arises in what cases proof of these events is to be called for, and of what such proof when called for should consist. Proof should (unless barred by contract) be required in all cases except where the event to be proved appears by recital in a deed dated upwards of twenty years previously to the date of the contract (*q*).

The usual evidence consists of certified extracts from the register kept in accordance with the Births and Deaths Registration Acts, 1836 to 1874 (*r*). The fact of birth, marriage or death (though not as a rule the time or order of birth or death) may also be proved by extracts from parochial registers of baptism, marriages and burials, and

(*q*) Vendor and Purchaser Act (37 & 38 Vict. c. 78), s. 2, r. 2.

(*r*) 6 & 7 Will. 4, c. 86; 7 Will. 4 & '1 Vict. c. 22; 21 & 22 Vict. c. 25; 37 & 38 Vict. c. 88.

40 BIRTHS, MARRIAGES, ETC.—BOROUGH-ENGLISH.

deaths may also be proved by extracts from the register established by the Burial Act, 1853 (r).

In some cases, *e.g.*, where a name is a common one, and in case of a death the person might possibly still be alive, or the exact date of death is of importance, it is expedient to require declarations as to the identity of the persons mentioned in the certificates.

When neither certificates nor recitals in deeds twenty years old are procurable, declarations by members of the family and entries in family bibles and other books made by such members, and inscriptions on tombstones, may be accepted as proving descent. This and any similar evidence which may under exceptional circumstances be accepted as proof of births, marriages and deaths on specified dates, should, where possible, be corroborated by statutory declaration.

Requisitions.

1. *The birth [marriage or death] of A. B. must be proved in the usual manner by production of certificate of birth [baptism, marriage, death or burial, as the case may be].*

2. *A pedigree showing the present state of the family of A. B., deceased, should be supplied to the purchaser, and should be verified by statutory declaration by a member of his family exhibiting certificates of the births, marriages, and deaths.*

3. *Probate of the will of the testator A. B. does not appear to have been produced with the other documents: his death must therefore be proved by certificate.*

BOROUGH-ENGLISH.

By the custom of Borough-English, so called in distinction to the Norman custom of primogeniture, lands subject to this tenure devolve, on the death of the ancestor, on the

(r) 16 & 17 Vict. c. 134, s. 8.

youngest instead of the eldest son. The custom extends in some manors to collaterals (*s*). Lands held under this and other burgage tenures were as a rule by custom devisable by will long before other land could be so transmitted.

According to Bacon's Abridgment and some other authorities, the widow was entitled to the whole of her husband's land in dower, but it would appear that this was not part of the custom of Borough-English, but only special custom. Dower out of land subject to the custom of Borough-English is affected by the Dower Act, 1833 (*t*), in similar manner to freehold land not so subject.

See DOWER AND FREEBENCH.

Requisitions.

1. *The land contracted to be sold by C. D. appears to be subject to the custom of Borough-English. Evidence must therefore be produced to show that C. D. was the youngest or only son of A. B. deceased.*

2. *The land is stated to be subject to the custom of Borough-English, and the title is adduced on that footing. What evidence does the vendor offer of the accuracy of the statement?*

BUILDING SOCIETIES.

Building societies incorporated under the Building Societies Act, 1874 (*u*), have power, so far as is necessary for the purpose of making advances to members upon real security, to hold land with the right of foreclosure, provided that any land to which any such society may become absolutely entitled by foreclosure or other extinguishment of the right of redemption shall, as soon afterwards as may be conveniently practicable, be sold or converted into money (*x*), and such a

(*s*) *Muggleton v. Barnett*, 2 H. & N. 653; 4 Jur. (N. S.) 139; 27 L. J. Ex. 125; 30 L. T. 247; 6 W. R. 182; Williams' R. P., 18th edit. 601.

(*t*) 3 & 4 Will. 4, c. 105.

(*u*) 37 & 38 Vict. c. 42, s. 13.

(*x*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 13.

society may also purchase or take upon lease any building for conducting its business, and may purchase or hold on lease any land for such purpose, and may sell, exchange, or let such building or any part thereof (y).

The Building Society Regulations, 1895, made under the Act of 1874, provide for the grant to building societies of certificates of incorporation, and any certificate of incorporation or registration or other document relating to a society under the Act purporting to be signed by the registrar is *prima facie* evidence in all courts without proof of the signature, and a printed copy of the rules of a society certified by the secretary or other officer of the society to be a true copy of its registered rules is *prima facie* evidence of the rules (z). A certificate of incorporation under the Act is not to be granted to an existing society except upon application to the registrar made by authority of a general meeting of the society specially called for the purpose, and the registrar may require of the person making the application a statutory declaration that such authority was duly given (a).

It may be mentioned here that building societies under the Act of 1836 (b), and not subsequently incorporated under the Act of 1874, were enabled to lay out surplus contributions on real security to be vested in the trustees for the time being of the society, and these securities vested in the successors of such trustees (c). A purchaser of property so vested should require the abstract to show the changes of the trustees, and proof to be adduced by production of the minutes of the society.

All estates and interests in real and personal estate belonging to or held in trust for any society certified under the Act of 1836, on its incorporation under the Act of 1874, vest

(y) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 37.

(z) *Ibid.* s. 20.

(a) *Ibid.* s. 12.

(b) 6 & 7 Will. 4, c. 32.

(c) *Ibid.* ss. 1, 4, applying the provisions of 10 Geo. 4, c. 56, as amended by 4 & 5 Will. 4, c. 40, s. 3; *Morrison v. Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204 14 J. P. 84.

in the society without any conveyance or assignment, except stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance (*d*). The Act of 1836 was, as from the 25th August, 1896, repealed as to all societies certified thereunder after the year 1856 (*e*).

A receipt for the moneys secured, indorsed on a mortgage or further charge to a building society under the Act of 1836 by the trustees for the time being, was sufficient to vacate the mortgage and vest the estate in the person entitled to the equity of redemption without any reconveyance, such receipt being in the form specified in a schedule to the rules of the society (*f*); and a society registered under the Act of 1874 may indorse or annex to a mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or as he may direct, or a receipt under the seal of the society countersigned by the secretary or manager in the form specified in the Act, and such receipt vacates the mortgage or further charge, and without reconveyance vests the estate in the person entitled (*g*).

The endorsed receipt of a building society operates in favour of the person or persons who, at its date, might have the best right to a conveyance of the property mortgaged; and where money was borrowed by A. from a building society, and A. afterwards borrowed a larger sum from B., part of which was applied in paying off the society, the balance being paid direct to A., who executed a mortgage to B. to secure the loan, the society indorsing a receipt on their mortgage and delivering the indorsed receipt with the deeds to A., it was held that B. had the legal estate for all purposes, and, consequently, that his mortgage had priority over that of a prior equitable mortgage of which he had no notice, not only in respect of the moneys applied in paying off the society, but

(*d*) 37 & 38 Vict. c. 42, s. 27;
40 & 41 Vict. c. 63, ss. 3, 4.

(*e*) 57 & 58 Vict. c. 47, s. 25 (2).

(*f*) 6 & 7 Will. 4, c. 32, s. 5.

(*g*) 37 & 38 Vict. c. 42, s. 42.

also in respect of the balance of the loan paid directly to A. (*h*).

The indorsed receipt of a building society under the Act of 1874 is exempt from stamp duty (*i*), while under the Act of 1836, prior to the 31st July, 1868, not only a receipt, but a mortgage by a member to a building society required no stamp. On or after that date such a mortgage was exempt only when not exceeding 500*l.* (*k*).

It seems to be doubtful whether a mortgage given to a building society by one of its members can be transferred, though it has been held in the Irish Courts that it may (*l*). Stirling, J., abstained from expressing any opinion on the point when it arose in *Re Rumney and Smith*, nor did the Court of Appeal in the same case decide it; but the observations of Lindley, L. J., seem to point to the conclusion that such a mortgage debt cannot be assigned to a stranger to the society without the consent of the mortgagor (*m*).

Building societies registered under the Act of 1874 may borrow for the purposes of the society a sum, in the case of a permanent society, not exceeding two-thirds of the amount secured to the society by mortgages from its members, and in the case of a terminating society, not exceeding such two-thirds or twelve months' subscriptions on the shares for the time in force (*n*). Previously to that Act a building society had no power to borrow unless expressly authorized, but a rule providing that the society was established for raising a fund by (*inter alia*) deposits on loans was sufficient to authorize the society to borrow (*o*). Power to borrow "for the purposes of the society" is strictly limited to such purposes,

(*h*) *Hosking v. Smith*, 13 App. Cas. 582; 58 L. J. Ch. 367; 59 L. T. 565; 37 W. R. 257; overruling on the point *Pease v. Jackson*, L. R. 3 Ch. 576; 37 L. J. Ch. 725; 17 W. R. 1; *Robinson v. Trevor*, 12 Q. B. D. 423; 43 L. J. Q. B. 85; 50 L. T. 190; 32 W. R. 374.

(*i*) 37 & 38 Vict. c. 42, s. 41.

(*k*) 31 & 32 Vict. c. 124, s. 11; Stamp Act, 1870 (33 & 34 Vict. c. 97),

s. 107; 54 & 55 Vict. c. 39, s. 89.

(*l*) *Ulster Permanent Building Society v. Glenton*, 21 L. R. Ir. 124.

(*m*) *Re Rumney and Smith*, (1897) 2 Ch. 351, at p. 359; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

(*n*) 37 & 38 Vict. c. 42, s. 15.

(*o*) *Re Mutual Aid Permanent Benefit Building Society, Ex parte Anson*, 30 Ch. D. 434; 55 L. J. Ch. 111; 53 L. T. 802; 34 W. R. 143.

and money lent to the directors and employed in a loan to another society was held not to be recoverable in a winding-up of the borrowing society (*p*).

A society incorporated under the Act of 1874 may terminate or be dissolved—

- (1) Upon the happening of any event declared by its rules to be the termination of the society.
- (2) By dissolution in manner prescribed by its rules.
- (3) By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number of shares in the society testified by their signatures to the instrument of dissolution. The instrument of dissolution must set forth—
 - (a) the liabilities and assets of the society in detail ;
 - (b) the number of members and the amount standing to their credit in the books of the society ;
 - (c) the claims of depositors and other creditors, and the provision to be made for their payment ;
 - (d) the intended appropriation or division of the funds and property of the society ;
 - (e) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent testified in the same manner. The instrument of dissolution and all alterations therein must be registered in the manner provided for the registration of rules, and are binding upon all members of the society.

- (4) By winding up either voluntarily under the supervision of the County Court of the district in which the chief office or place of meeting for business of the society is situate, or by such court, if the court shall so order, on the petition of any member authorized by three-fourths of the members present at a general

(*p*) *Davis's Case, Re Durham County Land and Building Society*, L. R. 12 Eq. 516; 41 L. J. Ch. 124; 25 L. T. 83.

meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than 50*l.*, but not otherwise (*q*).

In ascertaining the statutory majority of members, those members who have given notice of withdrawal, but have not received their money, are to be taken into account (*r*).

Societies not registered under the Act of 1874 may be wound up by the High Court under the Companies Act, 1862 (*s*), and by the County Court under the jurisdiction given by the Companies (Winding-up) Act, 1890 (*t*), and the society's property may in such cases be vested in the liquidators by order of the Court under the Act of 1862 (*u*).

Requisitions.

1. *The certificate of the Registrar of Building Societies of the incorporation of the X. Y. Society under the Building Societies Act, 1874, must be produced.*

2. *By whom was the building society mortgage of the 18 , paid off, and were there at the time any equitable incumbrances on the property?*

3. *What evidence do the vendor's solicitors offer that the County Court had jurisdiction to make the winding-up order (*x*) of the 18 ?*

4. *The X. Y. Building Society appears to be constituted under the old Act, and not to have been incorporated under the Act of 1874. A certificate from the secretary or a copy of the rules showing the authority of the trustees to indorse the receipt on the mortgage must be produced.*

5. *The instrument of dissolution of the X. Y. Building Society must be fully abstracted in chief in order that the purchaser may be satisfied that the statutory requirements have been complied with.*

(*q*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 32.

(*r*) *Sibun v. Pearce*, 44 Ch. D. 354; 63 L. T. 123; 38 W. R. 658.

(*s*) 25 & 26 Vict. c. 89, s. 82.

(*t*) 53 & 54 Vict. c. 63.

(*u*) 25 & 26 Vict. c. 89, s. 203.

(*x*) See *Re Bowling and Welby's Contract*, (1895) 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 417; 12 R. 218.

BURIAL GROUNDS.

No building can be erected upon any disused burial ground except for the purpose of enlarging a church, chapel, meeting house or other place of worship (*y*); this applies to any ground, whether consecrated or not, which has been at any time set apart for the purposes of interments, whether interments have taken place in it or not, and even if it has been partly or wholly closed (*z*).

The prohibition does not apply to any burial ground which has been sold or disposed of under the authority of an Act of Parliament (*a*), nor to any building erected under a faculty obtained before the 14th August, 1884, nor to the site of a church where extra-mural burial has taken place, when sold under a scheme made in pursuance of the Union of Benefices Act, 1860 (*b*).

A contract for sale of land subject to disability through being a disused burial ground will not be enforced against a person who buys for building purposes (*c*).

Requisition.

The land contracted to be sold appears to have formed part of a disused burial ground within the meaning of the Disused Burial Grounds Act, 1884, and the Open Spaces Act, 1887, s. 4, and cannot therefore be built upon. The vendors must show that the purchasers will be at liberty to erect buildings for secular purposes on the land.

(*y*) 47 & 48 Vict. c. 72, s. 3.

(*z*) 50 & 51 Vict. c. 32, s. 4; *Re Ponsford and Newport District School Board*, (1894) 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358; 7 R. 622.

(*a*) 47 & 48 Vict. c. 72, s. 5; *Att.-Gen. v. Trustees of the London Parochial Charities*, (1896) 1 Ch. 541; 65 L. J. Ch. 242; 74 L. T. 184; 44

W. R. 395.

(*b*) *Re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, (1895) 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. 481; 43 W. R. 457; 13 R. 409.

(*c*) *Re Trustees of St. Saviour's Rectory and Oyler*, 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325.

CHARGES.

See AGRICULTURAL HOLDINGS—LAND IMPROVEMENT ACTS.

CHARGES BY WILL.

A charge by will of debts and legacies may not only be created expressly but by implication; thus, as regards debts, a general direction by a testator that his debts shall be paid, charges them on the real estate (*c*); but not where after such general direction the testator has specified a particular fund for the purpose (*d*); nor where the direction is that the debts are to be paid by the executors, they not being devisees of the estate (*e*). If they are such devisees there is a charge on the real estate devised to them (*f*).

Again, as regards legacies, when they are given and followed by a gift of the residue of the testator's real and personal estate in a mass, the testator's real estate is thereby charged with the payment of such legacies (*g*), and the same principle applies where the legacies are followed by a gift of real and personal estate "not otherwise disposed of" (*h*).

On the other hand, a charge of legacies in such terms as "on all the real estate" of the testator, does not, *primâ facie*, charge lands specifically devised (*i*), but a charge of debts and legacies in similar terms does so as regards both debts and legacies (*k*).

A charge of legacies on real estate charges thereon any annuities given by the will (*l*).

A purchaser from an heir-at-law or devisee need not

(*c*) *Graves v. Graves*, 8 Sim. 43.

(*d*) *Thomas v. Britnell*, 2 Ves. sen. 313.

(*e*) *Cook v. Dawson*, 30 L. J. Ch. 359; 4 L. T. 326; 9 W. R. 434; 3 De G. F. & J. 127.

(*f*) *Henvell v. Whitaker*, 3 Russ. 343.

(*g*) *Greville v. Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.

(*h*) *Re Bawden, Bawden v. Cresswell*, (1894) 1 Ch. 693; 63 L. J. Ch. 412; 70 L. T. 526; 42 W. R. 235; 8 R. 76.

(*i*) *Conron v. Conron*, 7 H. L. C. 168.

(*k*) *Re Emmerton, Maskell v. Farrington*, 8 Jur. (N. S.) 1198; 7 L. T. 301; 11 W. R. 127; 1 N. R. 37.

(*l*) *Heath v. Weston*, 3 De G. M. & G. 601.

concern himself as to the existence of debts, legacies, or annuities unless they are expressly or impliedly charged upon the land. Where a testator charges his real estate and devises it upon trusts which provide for the payment of debts and legacies, no difficulty arises, as trustees have, by Lord St. Leonards' Act, power to give receipts for any purchase or mortgage money (*ll*), and Lord Cranworth's Act (*m*) subsequently gave trustees power to give receipts for any trust money payable under instruments coming into operation on or after the 28th August, 1860, and the Conveyancing Act, 1881 (*n*), applying to all trusts whenever created, provided that the receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power should be a sufficient discharge for the same, and should effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

But the payment of debts and legacies is frequently charged by testators upon their real estate while they devise such real estate upon uses or trusts which do not expressly provide for the raising of the sums so charged. The difficulties of dealing with land so charged have to a large extent been overcome by the provisions of Lord St. Leonards' Act. It will be convenient in the first place to consider that statute and afterwards the cases which will occasionally arise that are not covered by it. It provides that where, by a will coming into operation on or after the 13th August, 1859, a testator charges real estate with the payment of debts or any specific legacy or sum, and devises the estate so charged to trustees for the whole of his estate or interest, and makes no express provision for raising the debts, legacy, or sum, the devisees in trust may sell or mortgage (*o*), as also may any person taking the estate so charged by survivorship, descent, or devise (*p*), or failing any

(*ll*) 22 & 23 Vict. c. 35, s. 23.

(*m*) 23 & 24 Vict. c. 145, s. 29.

(*n*) 44 & 45 Vict. c. 41, s. 36, continued by the Trustee Act, 1893 (56

& 57 Vict. c. 53), s. 20.

(*o*) Lord St. Leonards' Act (22 & 23 Vict. c. 35), ss. 14, 16.

(*p*) *Ibid.* s. 15.

such devise by the testator of the whole of his estate or interest so charged, his executors may sell or mortgage (*p*), and purchasers and mortgagees are not bound to inquire whether the powers are being duly and correctly exercised (*q*). A purchaser or mortgagee is not bound to see to the application of purchase or mortgage money, and even before the Conveyancing Act, 1881 (*r*), the trustees or executors could give the purchaser or mortgagee a good receipt unless the contrary was expressly provided (*s*).

The Act does not extend to a beneficial "devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies" (*t*). The meaning of this is that where a testator has devised his whole estate and interest directly to or in trust for A., or A. and B., or any number of persons as tenants in common, or as joint tenants in fee or in tail, so that the devisee or devisees could themselves mortgage the property, then neither the executors nor the trustees are to have the power; but where the estate is devised by way of settlement, so that there is not any individual or any number of individuals able to make a title, then that is a case to which the statute is intended to apply (*u*).

The cases where a testator has charged his land with the payment of debts, legacies, or annuities, and has not made any express provision for raising them, but which are not provided for by Lord St. Leonards' Act, are:—

- (1) Where the testator died before 13th August, 1859.
- (2) Where the land charged is devised to one or more persons beneficially in fee or in tail or for the testator's whole estate and interest.
- (3) Where the testator has not devised the land charged to any trustee or trustees for his whole estate and interest therein, and there is no executor (*x*).

(*p*) 22 & 23 Vict. c. 35, s. 16.

(*q*) *Ibid.* s. 17.

(*r*) 44 & 45 Vict. c. 41, s. 36, continued by 56 & 57 Vict. c. 53, s. 20.

(*s*) 22 & 23 Vict. c. 35, s. 23

(*t*) *Ibid.* s. 18.

(*u*) *Re Wilson, Pennington v. Payne*, 54 L. T. 600; 34 W. R. 512, *per* Kay, J.

(*x*) *Re Clay and Tetley*, 16 Ch. D. 3; 50 L. J. Ch. 164; 43 L. T. 402; 29 W. R. 5.

(1) With regard to a charge of debts, it may now be safely assumed that all the debts of a testator who died before the 13th August, 1859, have been duly satisfied, or have become statute-barred. Where, however, it is thought necessary, an inquiry as to the testator's debts may be made so as to throw on the vendor the responsibility of stating that he has heard of no debts of the testator still remaining unpaid.

(2) Where there is a charge of debts generally, the purchaser from a beneficial devisee in fee or in tail is not bound to see to their payment, for "a charge is a devise of the estate in substance and effect *pro tanto* upon trust to pay the debts" (*y*). The case is, however, different where specified debts are charged upon the property, and it is then incumbent on the purchaser from such a devisee to satisfy himself that such debts have been paid, or to see that they are paid out of the purchase-money (*z*).

(3) Where the testator has not devised his estate to any trustee or trustees for his whole estate and interest, or to any person in fee or in tail, or for the testator's whole estate and interest, and there is no executor, unless the testator died sufficiently long ago to raise a presumption that his debts have been satisfied, it would appear to be impossible to make a title without the aid of the Court.

Where legacies or annuities are charged upon land, a purchaser must, in all these cases not provided for by Lord St. Leonards' Act, insist upon the concurrence of the legatees (*a*), and the same observation applies to specific or scheduled debts (*z*). Where debts as well as legacies are charged on the real estate, it is said that no further concurrence is necessary than where the lands are charged with debts alone, but where debts and annuities are charged upon property, it has always been the custom of conveyancers to treat annuitants as incumbrancers notwithstanding the charge of debts; and until it has been expressly decided that in such a case a purchaser is exonerated from inquiring into

(*y*) *Bailey v. Ekins*, 7 Ves. jun. 319.

(*z*) *Lloyd v. Balwin*, 1 Ves. sen. 173.

(*a*) *Re Rebbeck, Bennett v. Rebbeck*, 63 L. J. Ch. 596; 71 L. T. 74; 42 W. R. 473; 8 R. 376.

the payment of legacies and annuities, he would be well advised to require proof of payment of legacies as well as of annuities.

When annuities are charged upon land and the purchaser is buying the land subject thereto, a receipt for all the payments of the annuities which have been made during the previous six years should strictly be required, but it is not the practice, unless any doubt exist, to call for more than the last receipt, and in any case proof of the payments which have been made prior to the previous six years may be dispensed with (*c*). Where an annuitant has died, the purchaser should require the same proof of the payment of the annuity up to the death of the annuitant, and a receipt for the payment of succession and estate duties.

Whenever the receipt for the payment of a legacy or a receipt for the payment of any of the first four yearly payments of an annuity is required, the purchaser should consider whether legacy duty is payable in respect of such legacy or annuity, and, if so, should insist upon a receipt properly stamped as required by the Legacy Duty Act, 1796 (*d*).

When an annuitant concurs in a sale, the purchaser should insist upon such succession duty as will become payable on the decease of the annuitant being commuted or otherwise provided for.

Where there is a tenant for life, the provisions of the Settled Land Act, 1882, must be borne in mind (*e*), whereby the consent of the tenant for life is necessary to the exercise of any power exercisable for any purpose provided for by the Act. It is prudent to require such consent, although, even in the case of a sale to raise charges, it is doubtful whether it is strictly necessary.

Where a legal personal representative sells or mortgages leaseholds or (when the testator or intestate has died after 1897) freeholds, the purchaser is in no case bound to see to the payment of debts, legacies, or annuities.

(*c*) 37 & 38 Vict. c. 57, s. 42.

(*e*) 45 & 46 Vict. c. 38, s. 56 (2).

(*d*) 36 Geo. 3, c. 52.

A purchaser from a legatee of leaseholds, or from a devisee of real property taken under a will of a testator dying after the 31st December, 1897, should require the assent of the legal personal representative, which may, in the latter case, be given with or without a charge in respect of money which the personal representative is liable to pay (*f*), and where there is an intestacy an assignment or conveyance from such legal personal representative is now necessary in the case of real property as it has always been in the case of leaseholds.

See EXECUTORS, SALES AND MORTGAGES BY—TRUSTEES, SALES AND MORTGAGES BY—WILLS.

Requisitions.

1. *Which, if any, of the annuitants mentioned in A. B.'s will are dead, and when did they die? The deaths of such as are dead should be proved by the production of certificates.*

2. *There being a charge of legacies on the estate of C. D., deceased, payment thereof must be proved. What evidence is offered on the point?*

3. *The testator has specifically charged the property purchased with the payment of 1,000*l.* which he had covenanted to leave by will to his wife, and with the payment of a legacy of 500*l.* to his nephew. Proper receipts for both these payments must be produced.*

4. *Proof must be given of the payment of the rentcharge to A. B. up to the time of his death. Receipts for the succession duty and estate duty payable on the determination of such rentcharge must be produced.*

5. *So far as appears from the abstract, the annuitant A. B. is still alive; it is presumed that she will join in the conveyance to release her annuity. Proper provision must be made for the payment of death duties on her decease.*

6. *The assent in writing of the legal personal representative of A. B., deceased, to the devise to the vendors of the property contracted to be sold must be produced.*

(*f*) 60 & 61 Vict. c. 65, s. 3 (1).

CHARITABLE USES.

See MORTMAIN AND CHARITABLE USES.

CHATTELS REAL.

See LEASEHOLD PROPERTY.

COMMENCEMENT OF TITLE.

See LENGTH OF TITLE—ROOT OF TITLE.

COMMITTEE.

See INSANITY.

**COMPANIES REGISTERED UNDER THE
COMPANIES ACT, 1862 (g).**

On the registration of a company under the Act of 1862, the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, become a body corporate with power to hold land (*h*), such power being only restricted by the provision that no company formed for the purpose of promoting art, science, charity, or any other like object not involving the acquisition of gain by the company or by its individual members, can, without the sanction of the Board of Trade, hold more than two acres (*i*). A certificate of incorporation of any company given by the registrar is con-

(g) 25 & 26 Vict. c. 89.

(i) *Ibid* s. 21.

(h) Companies Act, 1862 (25 & 26 Vict. c. 89), s. 18.

clusive evidence that all the requirements of the Act in respect of registration have been complied with (*k*).

Subject as stated above, an incorporated company can hold property and dispose of it as freely as an individual, unless it is specially prohibited from so doing (*l*).

A fee simple estate may be conveyed to a company without any words of limitation. What, exactly, the so-called fee simple estates of corporations consist of, whether they are absolute or qualified, need not be here inquired into. It is sufficient to say that corporations can themselves convey an absolute estate in fee simple. A purchaser should, however, satisfy himself that the company's common seal is affixed in manner required by the articles of association.

The property of a company incorporated under the Act of 1862 is not divested by a winding-up order, but may still be conveyed in the name of the company. In the case of companies ordered to be wound up on or after the 1st January, 1891, property may be sold and the seal of the company be affixed by the liquidator without the sanction of the court or committee of inspection (*m*); but with regard to companies ordered to be wound up before that date, the sanction of the court is required to the liquidator selling property and affixing the company's seal (*n*).

The corporate state of a company being wound up voluntarily continues until its affairs are wound up (*o*), and the liquidator can sell the company's property and affix its seal without any sanction or consent (*p*). And where a company is being wound up under the supervision of the court, the liquidator may (unless otherwise directed by the court) exercise all the same powers without the intervention of the court as if the company were being wound up voluntarily (*q*).

In the case of the winding-up of unregistered companies, the property held on behalf of the company may be vested

(*k*) 25 & 26 Vict. c. 89, s. 18.

(*l*) *Re Patent Fils Co., Ex parte Birmingham Banking Co.*, L. R. 6 Ch. 83, at p. 87; 40 L. J. Ch. 190; 23 L. T. 484; 19 W. R. 193.

(*m*) 53 & 54 Vict. c. 63, s. 12 (2).

(*n*) 25 & 26 Vict. c. 89, s. 95.

(*o*) *Ibid.* s. 131.

(*p*) *Ibid.* s. 133.

(*q*) *Ibid.* s. 151.

56 COMPANIES REGISTERED UNDER ACT OF 1862.

in the liquidator by an order (r); but where there are several liquidators appointed, in order to pass the whole legal estate vested in them, all the liquidators must join in the conveyance (s).

Property in form duly conveyed to a corporation becomes vested in such corporation, even though the acquisition of it was *ultra vires* (t). Consequently, a purchaser is not concerned to inquire whether a company, through whom a vendor claims, was acting within its powers in purchasing; but this does not apply to an absolute statutory prohibition; a purchaser should therefore satisfy himself not only that the company was duly incorporated, but also that it was not formed for the purpose of promoting art, science, charity, or the like objects not involving the acquisition of gain (u), and this can be ascertained by the production of the registrar's certificate of incorporation and an inspection at the registry of the memorandum of association. Should it be found that the company was one of the description referred to, a purchaser should require either evidence that it does not hold more than two acres in all, or the production of the licence of the Board of Trade for so doing.

As to mortgages and charges by companies, see DEBENTURES.

Requisitions.

1. *A certificate by the Registrar of Joint Stock Companies of incorporation of the A. B. company must be produced, also a copy of the company's memorandum of association.*

2. *From its memorandum of association the C. D. company appears to have been formed for objects other than the acquisition of gain. It must therefore be proved that at*

(r) Companies Act, 1862 (25 & 26 Vict. c. 89), s. 203.

(s) *Re Ebsworth and Tidy's Contract*, 42 Ch. D. 23; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199.

(t) *Ayers v. South Australian Banking Company*, L. R. 3 P. C. 548; 40 L. J. P. C. 22; 19 W. R. 860; 7 Moore, P. C. C. (N. S.) 432.

(u) 25 & 26 Vict. c. 89, s. 21.

the time of the purchase in question the company did not in all, including the piece of land purchased, hold more than two acres, or a licence from the Board of Trade enabling it to hold more must be produced.

3. *It does not appear that the X. Y. company was registered under the Companies Acts. Either this must be shown or all persons interested must join in the conveyance, or an order of the court must be obtained.*

CONDITIONS OF SALE.

A condition of sale providing that the purchaser's objections and requisitions as to the title are to be sent to the vendor within a specified time after delivery of the abstract means the objections and requisitions addressed to the abstract as then delivered, and does not apply to objections or requisitions relating to deeds or matters which should have been, but were not, disclosed in the abstract (*x*). Nor does such a condition apply to objections going to the root of the title (*y*); if subsequent facts show a bad title or no title, the purchaser may raise the objection at any time (*z*). For the purposes also of a condition for rescission, time runs from the delivery of a perfect abstract, that is to say, one which contains with sufficient clearness and fulness the effect of every instrument which constitutes part of the vendor's title (*a*); and if the vendor does not deliver a sufficient abstract by the day appointed in the conditions, he cannot hold the purchaser bound to send in his objections within the time limited for that purpose, even though it was stipulated in the condition for sending in the objections that time in that respect should be of the essence of the contract. In

(*x*) *Re Cox and Neve's Contract*, (1891) 2 Ch. 109, at p. 118; 64 L. T. 733; 39 W. R. 412.

(*y*) *Want v. Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Ex. 108; 29 L. T. 293; 21 W. R. 685.

(*z*) *Warde v. Dixon*, 28 L. J. Ch. 315; 32 L. T. 349; 7 W. R. 148;

5 Jur. (N. S.) 698; *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465, at p. 471; 51 L. J. Ch. 434; 46 L. T. 542; 30 W. R. 801.

(*a*) *Oakden v. Pike*, 11 Jur. (N. S.) 666; 34 L. J. Ch. 620; 12 L. T. 527; 13 W. R. 673.

such a case the time in which objections will be considered as waived will depend upon the general principles of the Court and the conduct of the parties (*b*).

Wilful non-delivery of the abstract by the day named in the conditions, or within a reasonable time if no day is named, entitles the purchaser to refuse to carry out the contract (*c*); but the acceptance of the abstract after the day named in a condition for its delivery is a waiver of the condition (*d*); where, therefore, a purchaser intends to rely upon non-delivery at the time named, or where no time named within a reasonable time before the day fixed for completion, as a ground for refusing to carry out the contract, he should decline to accept the abstract and return it without reading it (*e*).

If a contract for the sale of land is silent as to the title which is to be shown by the vendor, the legal implication that the purchaser is entitled to a good title may be rebutted by evidence that before the execution of the contract the purchaser had notice of defects in the vendor's title; but if the contract expressly provides that a good title shall be shown, the purchaser is entitled to insist upon a good title, notwithstanding that, before the execution of the contract, he had notice of such defects (*f*).

A special condition precluding a purchaser from calling for a specified part of his vendor's title does not prevent him from taking objections as to matters which he discovers outside the abstract (*g*); and such a condition does not preclude requisitions being made on points in respect of which the title appearing is evidently defective, though it disentitles the purchaser from inquiring into matters of verification and evidence.

Where a condition provides that the purchaser shall not make

(*b*) *Upperton v. Nickolson*, L. R. 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733.

(*c*) *Compton v. Bagley*, (1892) 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706.

(*d*) *Hipwell v. Knight*, 1 Y. & C. 401; 4 L. J. Ex. (Eq.) 52.

(*e*) *Seton v. Slade*, 7 Ves. jun. 265,

at p. 276; 6 R. R. 124; 2 W. & T. 475.

(*f*) *Re Gloag and Miller*, 23 Ch. D. 320; 52 L. J. Ch. 664; 48 L. T. 629; 31 W. R. 601.

(*g*) *Darlington v. Hamilton, Kay*, 550; 23 L. J. Ch. 1000; 2 Eq. Rep. 906.

any objection to a certain part of the title, and the purchaser afterwards discovers that there is a vital defect in such part of the title, and consequently that the vendor has no title to the property, the court will refuse to decree specific performance of the contract, and will leave the parties to their remedies at law, but will not order repayment to the purchaser of his deposit (*h*).

A condition stating clearly the nature of a defect may throw the burden of it on the purchaser; but a condition referring to the nature of the question on the title, and stating that the vendors believe that they can make a good title notwithstanding it, will not have that effect (*i*).

A condition of sale is bad as misleading if it requires the purchaser to assume what the vendor knows to be false, or if it alleges that the state of title is not accurately known, when in fact it is known to the vendor (*k*); but a condition of sale requiring the purchaser to assume certain facts is not misleading if the vendor believes the facts to be true, even though it is intended to cover a flaw which goes to the root of the title; in such a case it is not necessary to explain in the condition the specific defect in the title which the condition is intended to cover (*l*).

A condition providing for compensation in case of misdescription is not binding when there is any wilful misdescription by the vendor, and the court will in such case relieve the purchaser from his contract, and where the misdescription, although not fraudulently made, is inaccurate in such a material and substantial degree, and so affecting the subject-matter of the contract that the purchaser would not get substantially what he bargained for, he is justified in refusing to carry out his contract (*m*).

(*h*) *Re Scott and Alvarez's Contract*, (1895) 2 Ch. 603; 64 L. J. Ch. 821; 73 L. T. 43; 43 W. R. 694; 12 R. 474.

(*i*) *Re Trustees of St. Saviour's Rectory and Oyler*, 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325.

(*k*) *Re Banister, Broad v. Munton*,

12 Ch. D. 131; 48 L. J. Ch. 837; 40 L. T. 828; 27 W. R. 826.

(*l*) *Re Sandbach and Edmondson's Contract*, (1891) 1 Ch. 99; 60 L. J. Ch. 60; 63 L. T. 797; 39 W. R. 193.

(*m*) *Re Arnold, Arnold v. Arnold*, 14 Ch. D. 270; 42 L. T. 705; 28 W. R. 635.

A condition that a misdescription shall not annul the sale nor entitle either party to compensation, applies only to trivial errors (*o*); but when there is a slight and unintentional misdescription of the property sold, even in the absence of an express condition to that effect, specific performance with compensation will be decreed (*o*).

In a recent case the contract provided that, if from any cause whatever other than the default of the vendor the purchase should not be completed by the day fixed, the purchaser should pay interest until completion. Upon the investigation of the title a defect in it was discovered by the vigilance of the purchaser's advisers, which was not known to or suspected by the vendor when he entered into the contract, and the time occupied in remedying the defect delayed the completion of the purchase for nearly three months, but the purchaser did not have his money ready at the time fixed for completion. It was held that, there being no want of reasonable care on the part of the vendor and no abstinence from doing anything that he ought to have done, the delay was not attributable to his default, and that the purchaser must pay interest until completion (*p*).

See RESCISSION.

Requisition.

It appears that [state nature of objection]. This objection goes to the root of the title, and notwithstanding Condition No. , the purchaser is entitled to and will decline the title offered.

CONDITIONS RESTRAINING MARRIAGE.

See MARRIAGE, RESTRAINT ON.

(*o*) *Re Arnold, Arnold v. Arnold*,
14 Ch. D. 270, at p. 279; 42 L. T.
705; 28 W. R. 635.

(*p*) *Re Woods and Lewis' Contract*,
(1898) 2 Ch. 211; 67 L. J. Ch. 475;
78 L. T. 665; 46 W. R. 643.

CONSIDERATION.

A deed does not require any consideration to support it as between the parties, but the consideration should appear (1) in order to prevent a resulting use in cases where no use is declared ; (2) in order to obviate the necessity of proof in cases where, though binding between the parties, a voluntary conveyance would be ineffectual against persons not parties (*u*) ; (3) because the receipt for the consideration in the body of a deed executed after the 31st December, 1881, is a sufficient discharge to a purchaser without a further receipt being indorsed (*x*) ; and a receipt either in the body of, or indorsed on, a deed executed after that date is sufficient evidence of the payment in favour of a subsequent purchaser who has no notice that the money has not been paid (*y*), and is also an authority for the payment of purchase-money and other consideration to the solicitor producing the deed (*z*) ; (4) because the effect of the Stamp Act, 1891 (*a*), is to impose a penalty on the omission to state the consideration with intent to defraud.

As to deeds executed before 1882, a receipt for the consideration should be indorsed, and the want of such indorsement is constructive notice that it has not been paid ; but a recital or statement is often sufficient on the ground of estoppel, and in a deed twenty years old the receipt in the body of the deed is sufficient evidence (*b*). Where, therefore, the receipt is not indorsed on deeds executed prior to 1882, evidence of the payment of the consideration should, with these exceptions, be in all cases required.

As to deeds executed after 1881, a receipt in the body of the deed is a sufficient discharge to a purchaser without a receipt being indorsed (*c*), and a receipt either in the body of

(*u*) *E.g.*, under 13 Eliz. c. 5, or the Bankruptcy Act, 1883.

(*x*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 54.

(*y*) *Ibid.* s. 55.

(*z*) *Ibid.* s. 56 ; The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17.

(*a*) 54 & 55 Vict. c. 39, s. 5.

(*b*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2.

(*c*) 44 & 45 Vict. c. 41, s. 54.

the deed or indorsed thereon is, in favour of a subsequent purchaser not having notice that the money was not in fact paid, sufficient evidence of the payment (*d*).

The survivor or survivors of two or more mortgagees holding as joint tenants could not formerly give a discharge unless the mortgage contained a proper clause enabling them to give receipts, or a joint account clause; but now with regard to mortgages to persons jointly, made after the 31st December, 1881, neither of such clauses is necessary, as the receipt of the survivors or survivor of two or more joint mortgagees is made sufficient (*e*).

See BANKRUPTCY—SETTLEMENTS.

Requisitions.

1. *The indenture of 1880, was executed prior to the Conveyancing Act, and has no receipt indorsed. What evidence does the vendor offer that the consideration was duly paid?*

2. *The indenture of , 189 , appears to have been a voluntary one, and, although dated more than two years ago, it is less than ten years old. What evidence does the vendor offer that the settlor was at the time able to pay all his debts without the aid of the property conveyed?*

[The answer to this would probably be that the title of the purchaser would prevail against the trustee in bankruptcy (*f*).]

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 55.

(*e*) *Ibid.* s. 61.

(*f*) *Re Carter and Kenderdine's Contract*, (1897) 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.

CONSOLIDATION OF MORTGAGES.

Consolidation is the right which a mortgagee has to require a mortgagor who is seeking to redeem one of several mortgages to redeem all other mortgages held by the mortgagee on properties of the mortgagor. A purchaser for value from a mortgagor of both the properties mortgaged is in no better position in this respect than the mortgagor himself, even if he purchases before the mortgages came into the same hands (*g*). Where, however, the union of the mortgages does not take place until after the equity of redemption in one of the properties mortgaged has been assigned for value, the mortgagee cannot consolidate, even though the right to redeem both mortgages afterwards becomes vested in the same person (*h*).

A mortgagor under a mortgage made after 1881 is entitled to redeem any one of several mortgages without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on other property. This does not, however, apply where a contrary intention is expressed in one of the mortgage deeds (*i*). The purchaser of an equity of redemption should therefore always satisfy himself by inquiry of the mortgagee whether he claims any such right, and should, if possible, obtain his answer in writing.

Requisition.

What is the present address of the mortgagee of the property contracted to be sold? Has the vendor effected any other mortgages which might be consolidated?

CONSTRUCTIVE NOTICE.

See NOTICE.

(*g*) *Pledge v. White*, (1896) A. C. 498; 63 L. J. Ch. 705; 71 L. T. 526; 187; 65 L. J. Ch. 449; 74 L. T. 7 R. 558.
 323; 44 W. R. 589. (i) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 17.
 (*h*) *Minter v. Carr*, (1894) 3 Ch. 45.

CONTINGENT REMAINDERS.

Since the 1st January, 1838, contingent remainders have been capable of being disposed of by will, whether the testator is or is not ascertained as the person in whom they may become vested, and since the 1st January, 1845, such remainders have been capable of being disposed of by deed, whether the object of the limitation of the interest is or is not ascertained (*k*).

The common law requires that there shall be at all times a tenant seised of the legal estate in the land; consequently every vested remainder must be so limited as to take effect in possession immediately on the expiration of the particular estate; and, prior to the 1st January, 1845, a contingent remainder was liable to fail unless it vested at or before the determination of such particular estate, whether such determination was caused by forfeiture, surrender, merger, or otherwise. To prevent such failure the practice grew up of appointing trustees to preserve contingent remainders. A contingent remainder existing after the 31st December, 1844, takes effect notwithstanding the determination by forfeiture, surrender, or merger of the preceding estate of freehold (*l*); but such a remainder continued for some years to be in all cases liable to fail unless it became vested at or before the determination of the particular estate by the expiration of the period for which it was originally limited. But every contingent remainder created by an instrument executed on or after the 2nd August, 1877, or by any will republished on or after that date which would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder in the event of the particular estate determining before the contingent remainder vests, is capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or

(*k*) 7 & 8 Vict. c. 76, s. 5; 8 & 9
Vict. c. 106, s. 6.

(*l*) The Real Property Act, 1845
(8 & 9 Vict. c. 106), s. 8.

shifting use, or executory devise, or other executory limitation (*m*).

In all cases where a contingent remainder has not become vested at or before the determination of the particular estate, it should be seen that there is a proper limitation to trustees to preserve contingent remainders, or that the instrument is within the Contingent Remainders Act, 1877 (*n*).

See PERPETUITIES.

Requisition.

The devise contained in the testator's will, dated in July, 1877, to such of his children as should attain the age of twenty-one years, would appear to have failed, as none of his children had attained twenty-one years at the time of his decease, and the will contained no devise to trustees to preserve contingent remainders. The testator's residuary devisee would therefore be entitled to the property contracted to be sold, and his concurrence must be obtained.

CONVEYANCES.

It is unnecessary for persons taking estates or interests under indentures executed on or after the 1st January, 1845, to be parties to such indentures (*o*).

Prior to the 1st January, 1882, an estate of freehold could not be conveyed directly by any person to himself or to any other person jointly with himself. Consequently, if A., a person solely seised, wished to convey to himself and B. as joint tenants, it was necessary for him to convey to B. to the use of A. and B., as a conveyance from A. directly to himself and B. would pass the whole estate to B.

As a husband and wife were considered one person, a

(*m*) Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33).

(*n*) *Ibid.*

(*o*) 7 & 8 Vict. c. 76, s. 11; 8 & 9 Vict. c. 106, s. 5.

husband could not, before the date last referred to, convey directly to his wife, nor a wife to her husband, but freehold land has since been capable of being conveyed by a person to himself jointly with another person or persons by the like means by which it might be conveyed by him to another person, and such land may in like manner be conveyed by a husband to his wife and by a wife to her husband alone or jointly with another person or persons (*p*).

With regard to leasehold estates, any person has been able, after the 12th August, 1859, to convey them directly to himself and another person or other persons by the like means whereby he might convey them to another (*q*), and after the 31st December, 1882, it would seem that leaseholds can be conveyed by a husband to his wife or by a wife to her husband (*r*).

Recitals of facts forming links in a chain of title must in general be proved, but the following do not require proof. (1) Those contained in a deed twenty years old at the date of the contract (*s*). (2) Those evidently framed for the purpose of keeping notice of trusts off a conveyance (*t*). (3) Of payment of the consideration in deeds executed after 31st December, 1881. (4) Those relating to the title prior to the time stipulated for its commencement (*u*).

Recitals of deeds which apparently do not relate to the property sold, or which, in answer to requisitions, are stated not to so relate, will not fix the purchaser with constructive notice of matters contained in the recited deeds (*x*), but if a recital appears to relate to the property sold, a requisition should be made for the instrument recited to be abstracted in chief unless it is prior to the root of title (*u*). A purchaser cannot avoid constructive notice by omitting to investigate

(*p*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 50.

(*q*) 22 & 23 Vict. c. 35, s. 21.

(*r*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (1).

(*s*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 2.

(*t*) *Re Harman and Uxbridge & Rickmansworth Rail. Co.*, 24 Ch. D. 720;

52 L. J. Ch. 808; 49 L. T. 130; 31 W. R. 857.

(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3).

(*x*) *English and Scottish Mercantile Investment Trust v. Brunton*, (1892) 2 Q. B. 700, at p. 714; 67 L. T. 406; 41 W. R. 133.

the title, even though the law under an open contract precludes investigation (z).

Though since the 1st October, 1845, all hereditaments, corporeal as well as incorporeal, have lain in grant, the use of that word is not necessary to effect a conveyance, and any words showing the grantor's intention are sufficient (a).

The appurtenance clause is now invariably omitted in reliance on the Conveyancing Act, 1881 (b). The insertion, however, expressly before the Act, or subsequently, impliedly by virtue of the Act, of this clause, probably added little, if anything, to the conveyance of the property as it was at the date of the conveyance, though it may be of importance as showing that no limitation was intended to be put upon the *prima facie* right of enjoyment by the grantee (c).

The "all estate" clause, always inserted in conveyances prior to 1882, was of little or no use. It did not have the effect of passing property other than that specified in the recitals (d). It also is now invariably omitted in reliance on the Conveyancing Act (e).

If the habendum is inconsistent with the grant it will have no effect; so, where by the habendum in a deed, an estate of freehold purported to be limited to commence from a future day, it was held that the deed was not void, as the instrument contained an express grant of the life estate *in presenti* which was not controlled by the habendum (f). If, however, the habendum is not inconsistent with the grant, explanatory words will be given effect to.

The tenendum was used before the statute *Quia Emptores* (g) to indicate of whom the feoffee was to hold the premises, and afterwards it was continued to show whether the premises were held in free socage or knight's service. It

(z) *Patman v. Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.

(a) 8 & 9 Vict. c. 106, s. 2; 44 & 45 Vict. c. 41, s. 49.

(b) 44 & 45 Vict. c. 41, s. 6.

(c) See *Broomfield v. Williams*, (1897) 1 Ch. 602; 66 L. J. Ch. 305; 76 L. T. 243; 45 W. R. 469.

(d) *Neame v. Moorson*, L. R. 3 Eq. 91, at p. 97; 36 L. J. Ch. 274; 15 W. R. 51; 12 Jur. (N. S.) 913.

(e) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 63.

(f) *Boddington v. Robinson*, L. R. 10 Ex. 270; 44 L. J. Ex. 223; 33 L. T. 364; 23 W. R. 295.

(g) 18 Ed. 1, c. 1.

is, in modern conveyances, put very shortly and combined with the habendum.

The word *heirs* was necessary in deeds prior to 1882 in order to pass an estate of inheritance, but in the case of deeds executed since 1882, it is sufficient, in limiting an estate in fee simple and in fee tail, to use the words *in fee simple* and *in tail* respectively in the place of the words *heirs* and *heirs of the body* (*h*). An equitable limitation by way of trust executed has the same construction as a legal limitation (*i*).

When the land purchased is situate in Middlesex, Yorkshire, or Kingston-upon-Hull, it must be seen that the deeds relating to it have been duly registered, and the absence or irregularity of the usual memorandum of registration must be inquired into.

It is not usual to require evidence of identity of persons executing deeds; but when there are any circumstances giving rise to suspicion or doubt, it may occasionally be expedient to do so. If A., personating B., executes a deed in the name of B. purporting to convey B.'s property, no right or interest passes by the deed (*k*).

Requisitions.

1. *The conveyance of _____, 18____, contains a recital of an indenture, dated the _____, 18____, which appears to relate to the property contracted to be sold. Will the vendors' solicitors state whether or not it does so relate? If it does, a supplemental abstract thereof in chief must be supplied.*

2. *The indenture of _____, 18____, has no memorandum of registration in the East Riding Registry indorsed. Was it duly registered, and, if so, what is the reference number?*

See APPOINTMENTS — CONSIDERATION — COVENANTS —
LEGAL ESTATE — RECEIPT — STAMPS — TITLE
DEEDS—USES.

(*h*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.

(*i*) *Re Whiston's Estate, Lovatt v. Whiston*, (1894) 1 Ch. 661; 63 L. J. Ch. 273; 70 L. T. 681; 42 W. R.

327; 8 R. 175.

(*k*) *Re Cooper*, 20 Ch. D. 611, *per* Day, J., at p. 623; 51 L. J. Ch. 862; 47 L. T. 89; 30 W. R. 648.

CONVICTS, TRAITORS AND FELONS.

Prior to the 4th July, 1870, attainder of treason caused a forfeiture to the Crown of the convict's freehold lands, while attainder of felony (*i.e.*, sentence of death or of outlawry on a capital offence) was a cause of forfeiture of such lands to the Crown for a year and a day, after which the lands escheated to the convict's feudal lord. The conviction related back, making dealings by the convict between the offence and conviction void. Attainder of treason or felony was a cause of forfeiture to the Crown of personal property, including leaseholds, and caused an escheat of copyhold lands to the lord of the manor.

.After the 3rd July, 1870, no conviction or judgment for treason or felony causes a forfeiture or escheat (*l*), and outlawry in civil actions was abolished in the year 1879 (*m*); it is now seldom resorted to in criminal cases, but where it is it still gives rise to forfeiture.

No action can be brought against a convict (that is to say, a person against whom judgment of death or penal servitude has been pronounced upon any charge of treason or felony) while his sentence is uncompleted and he has not been pardoned (*n*), and he is incapable during such time of alienating or charging any property or of making any contract (*n*), except as to property acquired while lawfully at large under any licence (*o*).

The Crown may appoint an administrator of any convict's property (*p*), in whom the convict's property vests when appointed (*q*); such administrator can let, mortgage, convey, and transfer any part as he thinks fit (*r*). The property reverts to the convict or his representatives on completion of sentence, pardon, or death (*s*).

Trust and mortgaged properties do not vest in the administrator on the trustee or mortgagee becoming a convict, but

(*l*) 33 & 34 Vict. c. 23, s. 1.

(*m*) 42 & 43 Vict. c. 59.

(*n*) 33 & 34 Vict. c. 23, s. 8.

(*o*) *Ibid.* s. 30.

(*p*) *Ibid.* s. 9.

(*q*) *Ibid.* s. 10.

(*r*) *Ibid.* s. 12.

(*s*) *Ibid.* s. 18.

remain in the trustee or mortgagee so long as he continues trustee or mortgagee, and on his death survive to his co-trustee or descend to his representative as if he had not become a convict (*s*); but this does not affect the title to the property so far as relates to any beneficial interest therein of such trustee or mortgagee (*t*).

The High Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony (*u*).

Requisition.

A. B. would appear to be a convict within the meaning of the Forfeiture Act, 1870 (x). Has any administrator of his property been appointed? If so, such administrator is the proper person to convey A. B.'s share.

CO-OWNERS.

See COPARCENERS—JOINT TENANTS—TENANTS BY ENTIRETIES—TENANTS IN COMMON.

COPARCENERS.

An estate of inheritance which descends from the ancestor to two or more persons together is said to be held in coparcenary. Coparcenary arises either by common law or particular custom: by common law where a person seised in fee simple or in fee tail dies, and his next heirs are two or more females, in this case they all inherit and are called coparceners (*y*). It arises by particular custom where lands descend, as in gavelkind, to males in equal shares, *e.g.*, to sons, brothers, or uncles of an intestate. When the coparcenary

(*s*) 4 & 5 Will. 4, c. 23, s. 3;
13 & 14 Vict. c. 60, s. 46; Trustee
Act, 1893 (56 & 57 Vict. c. 53), s. 48.

(*t*) 4 & 5 Will. 4, c. 23, s. 5;
13 & 14 Vict. c. 60, ss. 46 and 47;

56 & 57 Vict. c. 53, s. 48.

(*u*) 56 & 57 Vict. c. 53, s. 25 (1).

(*x*) 33 & 34 Vict. c. 33.

(*y*) Blackstone, Vol. II. p. 187.

arises in either way the coparceners put together make but one heir, and have but one estate among them (z).

Coparceners always claim by descent, unlike joint tenants, who always claim by purchase. Therefore, if two sisters purchase lands, to hold to them and their heirs, they are not coparceners, but joint tenants (z), and hence it likewise follows that no lands can be held in coparcenary except estates of inheritance, which are of a descendible nature (a).

There is no unity of time necessary to an estate in coparcenary. Thus if a man has two daughters to whom his estate descends in coparcenary, and one dies before the other, the surviving daughter and the heir of the other, or when both are dead their two heirs, are still coparceners. Nor is there any *jus accrescendi* or survivorship between coparceners, for each part descends severally to their respective heirs, though the unity of possession continues; and so long as the lands continue in a course of descent and united in possession, so long are the tenants, whether male or female, called coparceners (a).

A coparcener can dispose of his or her share by deed or by will, and the coparcenary is thereby destroyed.

On the death intestate of a coparcener, a co-heiress of the purchaser of land, her son, notwithstanding sect. 2 of the Inheritance Act, 1833 (b), stands in her place *quoad* her share (c); and this doctrine applies equally in favour of her more remote lineal descendants. Accordingly, on the death intestate of a son of such a coparcener without issue, the entire share was held to descend to a nephew of such son, the nephew being a grandson of the coparcener, and no part to the descendants of a sister of the coparcener (d).

It has always been possible for any one of several coparceners to compel partition, a power which tenants in common and joint tenants did not acquire till the reign of

(z) Blackstone, Vol. II. p. 187.

(a) *Ibid.* p. 188.

(b) 3 & 4 Will. 4, c. 106.

(c) *Cooper v. France*, 19 L. J. Ch.

313; 14 Jur. (O. S.) 214.

(d) *Re Matson, James v. Dickinson*, (1897) 2 Ch. 509; 66 L. J. Ch. 695;

77 L. T. 69.

Henry VIII. This is, according to Littleton, the reason why they are called coparceners (*e*).

Requisition.

It appears from the abstract of title that the property contracted to be sold is vested in Miss Jane Smith and her nephew John Jones as coparceners. It is presumed that the latter is of age and will join Miss Smith in the conveyance.

COPYHOLDS.

An abstract of title to copyhold property consists for the most part of extracts from copies in the vendor's possession of entries on the court rolls. The abstract should be examined with the copies and verified by searching the rolls.

The conveyance of copyholds is effected by surrender and admittance. A surrender may be either in or out of court. No presentment of a surrender out of court is now required prior to its enrolment (*f*).

Formerly, before copyhold property could be devised by will, its previous surrender to the user of the will was necessary, but since the 12th July, 1815, such surrender has been unnecessary (*g*).

The admittance of a tenant for life is the admittance of the remainderman, but not of a reversioner. The customary heir can surrender the estate without being first admitted, as may also an equitable tenant in tail.

An admittance may, since the 16th September, 1887, be effected by attorney (*h*).

Devisees in trust for sale must be admitted before they can convey. It is, however, the usual plan to direct trustees of a will to sell copyholds without devising the property to them,

(*e*) Litt. s. 241.

(*f*) 4 & 5 Vict. c. 35, ss. 89, 91.

(*g*) 55 Geo. 3, c. 192; 7 Will. 4 & 1 Vict. c. 26, s. 1.

(*h*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 2; Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 84 (2).

COPYHOLDS.

in which case the trustees are not admitted, but the purchase from them is, on payment of a single fine (*i*). On a sale by a limited owner under the Settled Land Acts, a purchaser will be admitted on production of the conveyance and the settlement without surrender (*k*).

There may be estates tail in copyholds in manors where a custom exists for such estates. The entail, if legal, must be barred by surrender; if equitable, by surrender or deed (*l*). The deed must be entered on the court rolls within six months of execution (*m*).

The statutory covenants for title under the Conveyancing Act, 1881 (*n*), are incorporated in a covenant to surrender in which the prescribed words are used, but they cannot be incorporated in the surrender itself, as it is not a deed (*o*). They may be so incorporated also in all cases where, by custom or otherwise, customary or copyhold hereditaments may be dealt with as freeholds, or where an equitable estate only is conveyed.

The customs of manors differ in many particulars on which the title may depend, and a purchaser's solicitor should inquire as to such customs when an abstract discloses any event which might be affected by them; *e.g.*, who on an intestacy is the customary heir; what is the custom as to freebench; what fines are payable and on what events, and whether any are owing.

Mortgages of copyholds are effected by covenant to surrender, followed or not by a conditional surrender and admittance. A mere covenant to surrender forms a good equitable security, but would not be effectual against a subsequent purchaser or incumbrancer without notice who obtained the legal estate by admission. The usual course is for the mortgagor to covenant to surrender, and to surrender conditionally, but for the mortgagee not to be admitted.

(*i*) *Garland v. Mead*, L. R. 6 Q. B. 441; 40 L. J. Q. B. 179; 24 L. T. 421; 19 W. R. 1156.

(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20 (3).

(*l*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 50.

(*m*) *Ibid.* s. 51.

(*n*) 44 & 45 Vict. c. 41, s. 7.

(*o*) *Ibid.* s. 7 (5).

This enables satisfaction to be entered when the mortgage is paid off, and saves the expense of a surrender and two admittances which would be necessary if the mortgagee were admitted; when the admittance takes place, the title of the surrenderee relates back to the date of the conditional surrender, so that no risk is run by the mortgagee not being admitted sooner.

The Dower Act does not apply to copyholds (*o*).

The wife's copyhold estates of inheritance descend on her death intestate to her customary heir subject to the husband's life estate by the curtesy (if any).

A lease by a copyholder extending beyond the term of a year is a cause of forfeiture to the lord of the manor unless a special custom to the contrary exists; but the lord can grant a licence to lease, and such licence is valid for the period during which his estate lasts, and a tenant for life may grant to a copyholder a licence to make any such lease as a tenant for life is empowered by the Settled Land Acts to make of freeholds (*p*). The lease, inasmuch as it arises out of the seisin of the freeholder, unlike copyhold assurances in general, requires registration under the Middlesex and Yorkshire Acts in cases where other leases require registration.

See COVENANTS—CURTESY—DOWER AND FREEBENCH—ENFRANCHISEMENT OF COPYHOLDS.

Requisitions.

1. *What is the custom of A. manor with regard to (a) fines, (b) heriots?*
2. *Is there any custom to entail in the manor of B.?*
3. *Is there any custom of C. manor for a wife to have freebench, and, if so, does it extend to lands disposed of by the husband during his lifetime?*
4. *Has the husband of the tenant of land part of D.*

(*o*) *Smith v. Adams*, 24 L. J. Ch. 712; 18 Beav. 499; 2 Eq. R. 1001.
 258; 23 L. T. (O. S.) 325; 2 W. R. (p) Settled Land Act, 1882 (45 &
 698; 18 Jur. 968; 5 De G. M. & G. 46 Vict. c. 38), s. 14.

manor any right under the customs of that manor to an estate by the curtesy, and if so, to what does such estate extend?

5. *Has satisfaction been entered on the court rolls of the conditional surrender by way of mortgage dated , 18 ? If not, it must be done.*

6. *Are there any rents or fines unpaid, or suits or services unperformed, or has any event happened which entitles or may entitle the lord of the manor to forfeiture?*

7. *Does any custom exist in the manor of E. for copyholders to grant leases? If not, the licence of the lord to the lease of 18 , must be produced.*

8. *A certificate of the steward of the manor must be produced to prove that, according to the custom of the manor, land descends on an intestacy to the [youngest son] as alleged.*

9. *With regard to the piece of waste comprised in the grant of , 189 , is there a custom of the manor of F. for the lord to grant portions of the waste as copyholds, and if so, is not the consent of the homage required? The presentment showing such consent must be abstracted, or the purchaser must be satisfied that it was not required by the custom of the manor.*

10. *The apportionment of the rent of l. must be proved by the production of the certificate or extract from the court rolls dealing with the same.*

11. *Are there any quit rents or other incidents of tenure to which the property in question is subject?*

CORPORATIONS.

See BUILDING SOCIETIES — COMPANIES REGISTERED UNDER THE COMPANIES ACT, 1862 — FRIENDLY SOCIETIES — SUPERFLUOUS LANDS.

COURT.*See ACTION.*

COVENANTS.

In conveyances (other than customary assurances conferring the right to admittance to copyholds not made by deed) executed after the 31st December, 1881, certain covenants for title are implied (*q*). They are as follows:—

- A. In a conveyance (other than a mortgage) for valuable consideration by a person expressed to convey as beneficial owner the covenants implied are for good right to convey, for quiet enjoyment, freedom from incumbrances, and for further assurance. These covenants extend to the acts not only of the person who conveys, but also of those persons through whom he derives title otherwise than by purchase for value (not including a conveyance in consideration of marriage, as to which, see E. below).
- B. In a conveyance (other than a mortgage) of leasehold property for valuable consideration by a person expressed to convey as beneficial owner, as well as the covenants referred to in A. above, a covenant is implied that the lease is a good, valid, and effectual one, and that the rents, covenants, and conditions therein have been paid, observed, and performed. The covenant extends not only to the acts of the person who conveys, but also of anyone through whom he derives title otherwise than by purchase for value (not including a conveyance in consideration of marriage).
- C. In a conveyance by way of mortgage by a person expressed to convey as beneficial owner is implied an absolute covenant that the mortgagee has a right to convey, for quiet enjoyment and freedom from incumbrances, and for further assurance, such covenants not

(*q*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7.

being limited to the acts of the mortgagor and his predecessors in title.

- D. In a conveyance by way of mortgage of leasehold property by a person expressed to convey as beneficial owner, as well as the covenants referred to in C. above, there is also implied an unqualified covenant for the validity of the lease and for payment of rent and performance of the covenants and conditions thereof.
- E. In a conveyance by way of settlement by a person expressed to convey as settlor, a covenant is implied for further assurance limited to the person conveying and every person subsequently claiming title under him.
- F. In any conveyance by a person expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition or under an order of the court, is implied a covenant, extending only to such person's own acts, that the person conveying has done no act to incumber.

Where a person conveys by direction of any person expressed to direct as beneficial owner, the person giving the direction, whether he is expressed to convey as beneficial owner or not, is deemed to be so expressed, and a covenant on his part is implied accordingly (*r*).

Where a wife is expressed to convey as beneficial owner, and the husband also conveys as beneficial owner, the wife is deemed to convey by direction of the husband as beneficial owner, and in addition to the covenant implied on her part, there is also implied a covenant by the husband as the person giving that direction, and a covenant by him in the same terms as the covenant implied on the part of the wife (*s*). The effect of this, where the wife and husband are each expressed to convey as beneficial owner, is that covenants are implied by the wife binding her separate property, and by the husband both as beneficial owner and in like terms as the

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (2).

(*s*) *Ibid.* s. 7 (3).

wife's implied covenant. With regard to the wife's covenant, it would, in the case of conveyances made before 1883, be enforceable only against separate estate to which she was entitled, free from any restraint on anticipation at the time the covenant was entered into and which remained at the time when judgment was obtained (*t*): In the case of conveyances made after 1882, but before the 5th December, 1893, if the wife had separate property unrestrained from anticipation at the time the covenant was entered into, such covenant would be enforceable against such separate property and also against separate property not restrained from anticipation which she thereafter acquired (*u*); but the removal, by reason of the death of the husband, of a restraint on anticipation which, in his lifetime, prevented the wife's separate property from being made available, did not make the property liable (*x*); but now, when the conveyance has been made on or after the 5th December, 1893, every contract entered into by a married woman otherwise than as agent is deemed to be entered into with respect to and to bind her separate property, whether she is or is not, in fact, possessed of any at the time she enters into the contract, and such contract binds all separate property which she may at the time or thereafter be possessed of, and which she is not restrained from anticipating (*y*).

An implied covenant may be varied or extended by deed (*z*). The benefits of implied covenants run with the land, but it seems that a purchaser who can obtain the legal estate cannot annul his contract on the ground that he is unable to get a complete string of covenants for title (*a*).

(*t*) *Pike v. Fitzgibbon*, 17 Ch. D. 454; 50 L. J. Ch. 394; 44 L. T. 562; 29 W. R. 551.

(*u*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (3) and (4); *Palliser v. Gurney*, 19 Q. B. D. 519; 56 L. J. Q. B. 546; 35 W. R. 760; 51 J. P. 520; *Stogdon v. Lee*, (1891) 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467; 55 J. P. 533.

(*x*) *Pelton Brothers v. Harrison*, (1891) 2 Q. B. 422; 60 L. J. Q. B. 742; 65 L. T. 514; 39 W. R. 689.

(*y*) Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.

(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (7).

(*a*) *Re Scott and Alvarez's Contract*, (1895) 1 Ch. 596; 64 L. J. Ch. 376; 72 L. T. 455; 12 R. 474.

The statutory covenants apply to covenants to surrender and other deeds conferring a right to admittance to copyhold or customary lands, but do not apply to demises by way of lease at a rent (*b*). Where the character in which a party conveys is not stated, no covenant is implied (*c*).

The use of the word demise in a lease imports into it a covenant for quiet enjoyment, and the effect of the covenant usually inserted in leases is to qualify the absolute covenant so implied.

The mention of the heirs or assigns, or executors, administrators, or assigns of the covenantee, in deeds entered into after the 31st December, 1881, is not necessary for the purposes of making a covenant run with the land if such covenant would otherwise so run (*d*), nor after that date need the heirs of the covenantor be named, as all covenants, though not so expressed, operate to bind the heirs and real estate as well as the executors and administrators (*e*).

In considering whether a good title is shown, the question often arises whether the purchaser would be bound by covenants relating to the land entered into by the vendor or his predecessors in title. The following are the chief points to bear in mind on the subject:—Obligations which have been entered into by a vendor or his predecessor in title on the purchase of freeholds may, except in the case of covenants restrictive of the user of the land, be disregarded by a purchaser, as there is no privity between a purchaser and the person in whose favour such obligations were entered into; consequently they do not run with the land.

With regard to purchasers of leasehold property, the rents and covenants remain constantly binding on the original lessee notwithstanding any assignment which he may make; but an assignee is only liable as such to the landlord for the rent which may be unpaid, and for the breach, during the

(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (5).

(*c*) *Ibid.* s. 7 (4).

(*d*) *Ibid.* s. 58.

(*e*) *Ibid.* s. 59.

time the term remains vested in him, of such covenants as relate to a thing *in esse* parcel of the premises demised.

Covenants which concern a thing not *in esse* at the time of the demise made, but to be done on the land afterwards, bind the covenantor, but not the assignee if he is not named (*f*).

The following covenants are of common occurrence in leases and run with the property:—To pay rates and taxes; to paint outside and inside; to repair; to deliver up at end of term in good repair; to insure; not to carry on on the premises particular occupations; not to assign without leave of lessor; to relieve the lessor from burdens in relation to the premises imposed by Act of Parliament or local or public authorities; to cultivate lands in a specified manner.

The following provisions apply on the sale of leasehold property if and so far as a contrary intention is not expressed in the contract of sale; in the case of a lease or underlease, on the production of the receipt for the last payment due for rent thereunder before the date of actual completion of the purchase, the purchaser must assume, unless the contrary appears, that all the covenants and provisions of the lease or underlease, as the case may be, have been duly performed and observed up to the date of actual completion of the purchase (*g*), and as regards an underlease, the purchaser must further assume that all rent due under every superior lease has been paid, and all the covenants and provisions of every superior lease have been duly performed and observed up to that date (*h*). The above provisions do not apply to any rent such as a peppercorn rent, which is rendered and not paid (*i*).

In the absence of special conditions, the receipt for rent is the only evidence which can be required of the due performance of the covenants in the lease or underlease as the case may be. The acceptance of rent with knowledge of a breach of covenant, is an implied waiver of a lessor's right to determine a lease in consequence of such breach. For these

(*f*) *Spencer's Case*, 5 Rep. 16a;
1 Sm. L. C. 52.

(*g*) Conveyancing Act, 1881 (44 & 45
Vict. c. 41), s. 3 (4), (5).

(*h*) *Ibid.* s. 3 (5).

(*i*) *Re Moody and Yates' Contract*,
30 Ch. D. 344; 54 L. J. Ch. 886;
53 L. T. 845; 33 W. R. 785.

reasons, therefore, amongst others, the last receipt for rent should always be called for on a purchase of leasehold property.

Inquiry should be made before completion of a purchase of leaseholds whether any notice has been received from the lessor of want of repair to the premises in accordance with the covenants.

In addition to those cases where a purchaser is bound by covenants which run with the land, are cases where a party is not permitted by the court to use his land in a manner inconsistent with the contract relating to it entered into by a previous owner, and with notice of which he purchased (*k*); but only such a covenant as can be complied with without expenditure of money will be enforced against the assign on this ground (*l*). A restrictive covenant which does not create any estate or interest in land does not offend against the rule against perpetuities (*m*). Where land is conveyed subject to covenants by the purchaser as to user for the benefit of the vendor and other purchasers, and the acts of the person for whose protection the covenants were entered into have so altered the character and condition of the adjoining lands that the restriction in the covenant ceases to be applicable according to the intent and spirit of the contract, a Court of Equity will not interpose to enforce the covenant, but will leave the parties to their remedy (if any) at law (*n*).

As a general rule, a purchaser of property sold without the particulars disclosing restrictive covenants, is not bound to accept the title if the property is found to be subject to such covenants (*o*). If, however, the purchaser was aware of the

(*k*) *Tulk v. Moxhay*, 18 L. J. Ch. 83; 13 L. T. (O. S.) 21; 13 Jur. 89; 2 Ph. 774; 1 H. & Tw. 105; *Wilson v. Hart*, L. R. 1 Ch. 463; 35 L. J. Ch. 569; 14 L. T. 499; 14 W. R. 748; 12 Jur. (N. S.) 460.

(*l*) *Haywood v. Brunswick Building Society*, 8 Q. B. D. 403; 51 L. J. Q. B. 73; 45 L. T. 699; 30 W. R. 299.

(*m*) *London and South Western Rail. Co. v. Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.

(*n*) *Duke of Bedford v. The Trustees of the British Museum*, 2 My. & K. 552; 2 L. J. Ch. 129.

(*o*) *Re Higgins and Hitchman's Contract*, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; *Ellis v. Rogers*, 29 Ch. D. 661; 53 L. T. 377.

restrictive covenants at the time he entered into the contract, and the contract was silent as to the title to be shown, he would probably not be able to successfully object to the title on the ground of such covenants; but if the contract expressly provided for a good title being shown, the purchaser can so object, even if he was aware of the restrictions at the time he entered into his contract (*p*).

If a lease is subject to onerous covenants of an unusual character, a purchaser is not bound to complete, unless, before the agreement was made, he had a fair opportunity of ascertaining for himself the terms of such covenants (*q*).

Notice to a purchaser of a lease is constructive notice of its contents (*r*), provided that he has had a fair opportunity of ascertaining what they were (*s*).

See ANNUITIES AND RENTCHARGES—RESTRICTIONS AS TO
USER OF LAND—SETTLEMENTS.

Requisitions.

1. *The last receipts for the rent payable under the leases and the policies of insurance against fire in accordance with the covenants must be produced as well as the last receipts for rates, taxes, and other outgoings.*

2. *Has any notice of want of repair under the covenants in the leases been received by the vendor?*

3. *The proposed mortgagee must be satisfied that the covenants contained in the indenture of , 18 , as to the elevation and building line of the house which has just been completed, have been complied with.*

4. *The restrictive covenants contained in the indenture of , 18 , were not referred to in the particulars. Unless the vendor can prove that the character and condition of the adjoining lands has undergone such a change as is referred to*

(*p*) See *Re Gloag and Miller's Contract*, 23 Ch. D. 320; 52 L. J. Ch. 654; 48 L. T. 629; 31 W. R. 601.

(*q*) *Reeve v. Berridge*, 20 Q. B. D. 523; 57 L. J. Q. B. 265; 58 L. T. 836; 36 W. R. 517; 52 J. P. 549.

(*r*) *Hall v. Smith*, 14 Ves. jun. 426; 9 R. R. 313.

(*s*) *Hyde v. Warden*, 3 Ex. D. 72; 47 L. J. Ex. 121; 37 L. T. 567; 26 W. R. 201.

in The Duke of Bedford v. The Trustees of the British Museum, the purchaser will refuse to complete the contract.

5. The landlord's consent in writing to the proposed assignment in accordance with the covenant contained in the lease must be produced.

6. Has the covenant contained in the lease to the vendor to make a footpath in front of the premises been complied with? The purchaser must be satisfied on this point.

7. The lease of , 18 , contains a covenant that the house shall be used as a private dwelling-house only. It is understood that no objection to the carrying on of a profession in the H. Street houses is made. It is intended to use the house for this purpose, and an assurance in writing must be obtained from the lessor that the covenant is not intended to extend to the practice of a profession.

CROWN DEBTS.

See SEARCHES.

CURTESY.

Curtesy is the right which, on the death of a wife, the husband has to an estate for life in the freehold property of which the wife was, at her death, entitled for an estate in fee simple, or in fee tail in possession at law, or in equity. It arises only where the property in question is not conveyed during the wife's lifetime, and where the husband survives having had issue of the wife born alive capable of inheriting the estate as her heir. The husband's estate by curtesy attaches to property settled on a woman for her separate use, or to which she is entitled as separate property under the Married Women's Property Act, 1882, only if the wife dies intestate as to such property (*t*).

(*t*) *Hope v. Hope*, (1892) 2 Ch. 336; 61 L. J. Ch. 441; 66 L. T. 522; 40 W. R. 522.

There is no curtesy in respect of lands held in joint tenancy.

The husband's right to curtesy out of the wife's copyhold lands depends upon the custom of the manor of which such lands form part. The curtesy (if the custom exists) of husbands married before the enfranchisement of lands enfranchised under the Copyhold Acts is not lost by such enfranchisement (*t*). On a purchase of copyhold property enfranchised under these Acts since the marriage of a female owner, inquiry should be made as to what customs with regard to curtesy exist in the manor of which such property forms or formed part.

Curtesy extends only to one-half of land subject to the custom of gavelkind, and continues only while the husband remains a widower, and it is not contingent on issue being born.

A tenant by the curtesy in possession has the powers of a tenant for life under the Settled Land Acts (*u*), and his estate is deemed to arise under a settlement made by his wife (*x*).

Requisitions.

1. *Did Mrs. A. B. at any time have issue by her husband born alive and capable of inheriting the premises contracted to be sold? If so, either the death of her husband G. B. must be proved, or, if he is still alive, he must join for the purpose of releasing his estate by the curtesy.*

2. *As A. B. is selling under the Settled Land Act in respect of his estate by the curtesy, proof must be given in the usual manner of his marriage, the death of Mrs. B., and the birth of issue capable of inheriting.*

CUSTOMS.

See COPYHOLDS.

(*t*) 4 & 5 Vict. c. 35, s. 79; 15 & 16 Vict. c. 51, s. 34; 57 & 58 Vict. c. 46, s. 21 (1) (c).

(*u*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (viii).

(*x*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 8.

DATE.

A title may, and often does, depend upon the exact date of a deed, and care should be taken to see that all dates are accurately stated in the abstract.

When two deeds are executed on the same day, the Court will inquire which was, in fact, executed first, but if there is anything in the deeds themselves to show an intention either that they shall take effect, *pari passu*, or even that the later deed shall take effect in priority to the earlier, in that case the court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties (*y*).

Requisitions.

1. *The date of the settlement recited in the indenture abstracted on page of the abstract of title is there given as 1st September, 1895, whereas in the recital to it in the indenture abstracted on page it is given as 21st September. Which of these dates is correct?*

2. *The date of the indenture of th March, 189 (abstract, page), is blank in the original. A statutory declaration must be made proving the date of execution.*

DEATH.

See BIRTHS, MARRIAGES AND DEATHS.

DEATH OF VENDORS AND PURCHASERS.

See VENDORS AND PURCHASERS, BANKRUPTCY OR DEATH OF, BEFORE COMPLETION.

(*y*) *Gartside v. Silkstone and Dodsworth Coal and Iron Co.*, 21 Ch. D. 762; 51 L. J. Ch. 828; 47 L. T. 76; 31 W. R. 36.

DEATH DUTIES.**(i) Succession Duty.**

This duty, which was first imposed by the Succession Duty Act, 1853 (s), is payable (with certain exceptions noticed below) upon any succession to real or personal property occurring upon the death of any person on or after the 19th May, 1853. It is a first charge on the interest of the successor and of all persons claiming in his right on all real and leasehold property in respect of which such duty shall be assessed (a). The effect of this is to render the interest even of a *bonâ fide* purchaser for value of any estate liable for such succession duties as are payable in respect of the property purchased and have not been paid at the time of the purchase. It is therefore of the greatest importance that proof should be obtained of the payment of such duties.

The definition of a succession contained in the Act (b) is a very wide one. Under it every disposition of property, whether before or after the Act, by reason whereof any person has or shall become entitled to any property, or the income thereof, upon the death of any person either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person to any other person in possession or expectancy, is deemed to have conferred on the person entitled by reason of any such disposition or devolution a "succession."

The terms "predecessor" and "successor" respectively are the terms used in the Act to distinguish the person from whom the interest is derived and the person who subsequently becomes entitled to it.

In the case of the death of one of several joint-tenants, the deceased joint-tenant is deemed to be a "predecessor," and

(s) 16 & 17 Vict. c. 51.

(a) *Ibid.* ss. 1, 42.(b) *Ibid.* s. 2.

the joint-tenants or joint-tenant taking by survivorship is deemed to be a successor (c).

A person becoming entitled to a general power of appointment is, in the event of his making any appointment thereunder, deemed to be entitled, at the time of exercising such power, to the property thereby appointed as a succession derived from the donor of the power, and where any person has a limited power of appointment under a disposition taking effect upon any death, any person taking any property by the exercise of such power is deemed to take it as a succession derived from the person creating the power as predecessor (d).

The extinction of charges determinable upon the death of any person is deemed to confer a succession accruing to the person or persons beneficially entitled to the property subject to such determinable charges (e). So also the extinction of any benefit determinable on the death of any person who has made any disposition of property, not being a *bonâ fide* sale whereby any such benefit was reserved to the grantor, is deemed to confer a succession equal in annual value to the yearly value of such benefit (f).

Fraudulent dispositions made to evade duty are deemed to confer successions, the person making such disposition being deemed to be the predecessor (g).

Succession duty is not payable until the successor becomes entitled in possession to his succession, or in the case of outstanding determinable interests until the determination thereof (h); but the Commissioners have power, upon the application of any person entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid (i).

The Act provides that no *bonâ fide* purchaser for value under a title not appearing to confer a succession shall be subject to any duty by reason of any intrinsic circumstance

(c) 16 & 17 Vict. c. 51, s. 3.

(d) *Ibid.* s. 4.

(e) *Ibid.* s. 5.

(f) *Ibid.* s. 7.

(g) *Ibid.* s. 8.

(h) *Ibid.* s. 20.

(i) *Ibid.* s. 41.

of which he shall not have had notice at the time of the purchase, and every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof, exonerates a *bond fide* purchaser for value, notwithstanding any suppression or mis-statement in the account upon the footing whereof the same was assessed, or any insufficiency of such assessment (*k*).

The Customs and Inland Revenue Act, 1889 (*l*), provides that real and leasehold property shall not, as against a purchaser for value, remain charged with any sum for succession duty after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to such duty (*m*). In perusing an abstract, the conveyancer should consider whether any event disclosed within twelve years gives rise to an immediate claim to succession duty. Events most likely to give rise to such claims are deaths, and the exercise of powers of appointment.

In addition to claims arising upon events which happen during the twelve years immediately preceding, it is necessary to bear in mind that there may be inchoate claims to duty not yet payable. For instance, if in the year 1880 a tenant for life and a remainderman conveyed to a purchaser, and if, when the title is afterwards investigated, the tenant for life is still alive, the estate will be liable to duty in the future upon the death of the tenant for life, and in such case the purchaser should insist upon the duty being commuted before completion.

The following are the principal events of the nature of successions in respect of which no duty is payable:—

- (1) Where a succession has occurred upon the death of a person before the 19th May, 1853 (*n*).
- (2) In respect of an interest surrendered or extinguished before the 19th May, 1853 (*o*).

(*k*) 16 & 17 Vict. c. 51, s. 12.

(*l*) 52 & 53 Vict. c. 7.

(*m*) *Ibid.* s. 12.

(*n*) 16 & 17 Vict. c. 51, ss. 2, 54.

(*o*) *Ibid.* s. 18.

- (3) On a succession from husband to wife or from wife to husband (*p*).
- (4) Whenever legacy duty has been paid in respect of the property in question (*q*).
- (5) Where the successor is the lineal issue or lineal ancestor of the predecessor in respect of any succession to property on which probate duty or account duty shall have been paid (*r*).
- (6) Where the successor is the lineal issue or lineal ancestor of the predecessor in respect of any succession chargeable with estate duty (*s*).
- (7) Where the successor is the lineal issue or lineal ancestor of the deceased, and the property is settled and estate duty has been paid in respect of it since the date of the settlement (*t*).
- (8) Where the net value of the property, in respect of which estate duty is payable on the death of the predecessor, exclusive of property settled otherwise than by the will of the predecessor, does not exceed 1,000*l.*, and where estate duty has been paid in respect of that estate, succession duty is not payable under the will or intestacy of the predecessor (*u*).
- (9) Where the whole succession or successions derived from the same predecessor, and passing upon any death, do not amount in value to 100*l.*, and where the succession is of less value than 20*l.* (*x*).
- (10) No succession duty is payable on an advowson or next presentation unless the same is sold (*y*).

In cases not within the above exceptions, a purchaser must insist upon the production of the receipt of the Inland Revenue office, or the certificate of the Commissioners showing payment. As legacy duty and succession duty are not both

(*p*) 16 & 17 Vict. c. 51, s. 18.

(*q*) *Ibid.* *Howe, Earl v. Litchfield*,
Earl, L. R. 2 Ch. 155; 36 L. J. Ch.
813; 16 L. T. 436; 15 W. R. 323.

(*r*) 44 & 45 Vict. c. 12, s. 41.

(*s*) Finance Act, 1894 (57 & 58

Vict. c. 30), s. 1, Sched. 1.

(*t*) *Ibid.* ss. 5 (2), 22 (2) (a); 61 & 62
Vict. c. 10, s. 13.

(*u*) *Ibid.* s. 16.

(*x*) 16 & 17 Vict. c. 51, s. 18.

(*y*) *Ibid.* s. 24.

payable in respect of the same succession, a purchaser may be satisfied with proof that legacy duty has been paid (z).

In the case of a sale of settled property under an overriding power, or under the powers conferred by the Settled Estates Act, 1877, or the Settled Land Act, 1882, the liability to succession duty is transferred to the purchase-money (a).

(ii) Estate Duty and Settlement Estate Duty.

All property, real or personal, settled or not settled, which passes on the death of every person dying on or after the 2nd August, 1896, is liable to a duty called "estate duty" (b). Property passing on death is deemed to include—

- (1) Property of which the deceased was at the time of his death competent to dispose, or of which he would have been competent to dispose had he at that time been *sui juris* (c). This includes property over which the deceased had a general power of appointment, whether such power was exercisable by instrument *inter vivos*, or by will, or both, and also property of which he was tenant in tail, whether in possession or not, but does not include property over which he had only special power of appointment unless such special power was created by the deceased himself, nor does it include property over which the deceased had only a mortgagee's power of sale, or property of which he could dispose as tenant for life under the Settled Land Act, 1882 (d).
- (2) Property in which the deceased or any other person had an interest ceasing on his death to the extent to which a benefit accrues or arises by the cesser of such interest, but exclusive of property the interest in which of the deceased or other person, was only an interest

(z) *Howe, Earl v. Litchfield, Earl*, L. R. 2 Ch. 155 ; 36 L. J. Ch. 313 ; 16 L. T. 436 ; 15 W. R. 323.

(a) 16 & 17 Vict. c. 51, s. 42 ; *Dug-*

dale v. Meadows, L. R. 6 Ch. 501 ; 40 L. J. Ch. 140 ; 24 L. T. 113.

(b) 57 & 58 Vict. c. 30, s. 1.

(c) *Ibid.* s. 2 (1) (a).

(d) *Ibid.* s. 22 (2) (a).

as holder of an office or recipient of the benefits of a charity or as a corporation sole (*e*).

- (3) Property taken as a *donatio mortis causâ*, or taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* which has not been made *bonâ fide* one year before the death of the deceased, and property taken under any gift, whenever made, of which *bonâ fide* possession and enjoyment has not been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or any benefit to him by contract or otherwise (*f*).
- (4) Property which the deceased has, either by himself alone, or in concert or by arrangement with any other person, caused to be vested in himself and any other person jointly, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person (*g*).
- (5) Property passing under any settlement made by any deed or other instrument not taking effect as a will, whereby an interest in such property for life, or any other period determinable by reference to death, is reserved to the settlor, or whereby the settlor reserved to himself a power of revocation (*h*).
- (6) Money received under a policy of assurance when the policy has been kept up by the deceased for the benefit of a donee (*i*).
- (7) Any interest purchased or provided by the deceased, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased (*k*).

(*e*) 57 & 58 Vict. c. 30, s. 2 (1) (b).

(*f*) *Ibid.* s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (a); 52 & 53 Vict. c. 7, s. 11 (1).

(*g*) 57 & 58 Vict. c. 30, s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (b); 52 & 53 Vict. c. 7, s. 11 (1).

(*h*) 57 & 58 Vict. c. 30, s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (c); 52 & 53 Vict. c. 7, s. 11 (1).

(*i*) 57 & 58 Vict. c. 30, s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (c); 52 & 53 Vict. c. 7, s. 11 (1).

(*k*) 57 & 58 Vict. c. 30, s. 2 (1) (a).

Property passing on death is not deemed to include property held by the deceased as trustee for another person, except where he is trustee under a disposition made by himself within a year of his death, or where possession or enjoyment has not been *bonâ fide* assumed by the beneficiary immediately on the creation of trust and thenceforward retained to the entire exclusion of the deceased, or any benefit to him by contract or otherwise (*l*).

There are certain cases of exemption from estate duty. Those affecting the subject of investigation of title are—

- (1) Property passing on the death of the deceased by reason of a *bonâ fide* purchase from the person under whose disposition the property passes (*m*).
- (2) The falling into possession of any lease for lives granted for full consideration in money or money's worth (*m*).
- (3) The determination of an annuity for lives granted for full consideration in money or money's worth (*m*).
- (4) No estate duty is payable on an advowson or right of next presentation unless such advowson or right of next presentation is sold (*n*).
- (5) Where the net value of the estate does not exceed 100*l*. (*o*).
- (6) Where an interest in expectancy has, before the 2nd August, 1894, been sold or mortgaged, the purchaser or mortgagee takes free from estate duty (*p*).
- (7) Where husband or wife is entitled either solely or jointly with the other to the income of any property settled by the other under a disposition which has taken effect before the 2nd August, 1894, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty is not payable in respect of such property until the death of the survivor (*q*).
- (8) Where, on or after the 1st July, 1896, the interest of

(*l*) 57 & 58 Vict. c. 30, s. 2 (3).

(*m*) *Ibid.* s. 3 (1).

(*n*) *Ibid.* s. 15 (4); 16 & 17 Vict.
c. 51, s. 24.

(*o*) *Ibid.* s. 17.

(*p*) *Ibid.* s. 21 (3).

(*q*) *Ibid.* s. 21 (5).

the settlor of settled property is enlarged by the death of any person entitled in remainder, or where settled property reverts on the death of a tenant for life to the original settlor, the property is not deemed to pass on such death so as to be liable to estate duty (*r*).

- (9) Where estate duty has already been paid in respect of settled property since the date of the settlement, estate duty is not payable in respect of it until the death of a person who was competent to dispose of the property (*s*) and who, if subsequent limitations continue to subsist on his death, was also *sui juris* (*t*).
- (10) Where, in the case of settled property, the interest of any person under the settlement fails before it becomes an interest in possession, and subsequent limitations continue to subsist, the property is not deemed to pass on his death (*u*).
- (11) Where the deceased has purchased an annuity for the life of himself and of some other person, and the survivor of them, or to arise on his own death in favour of some other person, and such annuity does not exceed 25%, estate duty is not payable in respect of that annuity, or if there is more than one such annuity, in respect of the first annuity granted (*x*).

Settlement estate duty is imposed where property in respect of which estate duty is leviable is settled by the will of a deceased, or having been settled by some other disposition, passes on the death of the deceased to some person not competent to dispose of the property (*y*).

The following are the principal cases of exemption from settlement estate duty:—

- (1) Where the only life interest in the property after the

(*r*) Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 14, 15.

(*s*) 57 & 58 Vict. c. 30, s. 5 (2); as to meaning of competent to dispose, see *Ibid.* s. 22 (2) (a), p. 90.

(*t*) Finance Act, 1898 (61 & 62

Vict. c. 10), s. 13.

(*u*) 57 & 58 Vict. c. 30, s. 5 (3).

(*x*) *Ibid.* s. 15 (1).

(*y*) *Ibid.* s. 5 (1); as to meaning of competent to dispose, see *Ibid.* s. 22 (2) (a), p. 90.

death of the deceased is that of a wife or husband of the deceased (*y*).

- (2) Where it had already been paid once during the continuance of the settlement (*z*).
- (3) Where the net value of the property does not exceed 1,000*l.*, and estate duty has been paid (*a*).
- (4) In respect of property settled by a disposition which has taken effect before the 2nd August, 1894 (*b*).
- (5) As settlement estate duty is only payable in respect of property upon which estate duty is leviable, the cases of exemption from estate duty are also cases of exemption from settlement estate duty (*c*).

A rateable part of the estate duty on an estate in proportion to the value of any property which, prior to the Land Transfer Act, 1897 (*d*), did not pass to the executor as such, is made a first charge on the property in respect of which duty is leviable (*e*). There is, however, no provision in the Act charging with the payment of estate duty any property which, prior to the Land Transfer Act, 1897 (*d*), passed to the executor as such, and consequently the estate duty and settlement estate duty on all such property are payable out of the residuary estate (*f*). In cases, therefore, where leasehold estates have been specifically bequeathed, there is no necessity for a purchaser to make inquiries as to the payment of these duties.

Settlement estate duty leviable in respect of personal property settled by the will of a person dying on or after the 1st July, 1896, is payable out of the settled legacy or property in respect of which the settlement estate duty is leviable (*g*); but it is conceived that this provision does not cast any obligation upon the purchaser to see that settlement estate duty has been paid.

(*y*) 57 & 58 Vict. c. 30, s. 5 (1)
(*a*) (*b*).

(*z*) *Ibid.* s. 5 (1) (*b*).

(*a*) *Ibid.* s. 16 (3).

(*b*) *Ibid.* s. 21 (4).

(*c*) *Ibid.* s. 5 (1).

(*d*) 60 & 61 Vict. c. 65.

(*e*) 57 & 58 Vict. c. 30, s. 9 (1);
60 & 61 Vict. c. 65, s. 5.

(*f*) *Re Culverhouse, Cook v. Culverhouse*, (1896) 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347; 45 W. R. 10.

(*g*) 59 & 60 Vict. c. 28, s. 19.

The twelve years' limit applies to estate duty as well as to succession duty, and *bonâ fide* purchasers for value without notice are protected (*h*).

In cases where, in consequence of the merger of a life interest in the reversion expectant thereon, no property actually passes on the death of the owner of the life interest, estate duty is not payable. And where a tenant for life appointed to her son subject to her life interest, and subsequently surrendered her life interest to him, it was held that, upon the death of the tenant for life, estate duty was not payable in respect of the property appointed to the son (*i*).

The payment of estate duty is proved by the receipt of the Inland Revenue Office or by the certificate of the Commissioners (*k*).

(iii) Legacy Duty.

It is important, in dealing with a reversionary interest under a will, to ascertain whether legacy duty has been paid. Where personal property is given in succession to persons who are chargeable with duty at one and the same rate, legacy duty is at once payable out of the corpus so given; but where the beneficiaries do not pay the same rate of duty, legacy duty is not immediately charged on the corpus, but is charged upon the beneficial interest of each legatee when his interest falls into possession, and the persons entitled to a temporary interest pay the legacy duty by four equal annual instalments (*l*).

The payment of legacy duty is proved by a copy of the entry in the books of the Commissioners of the payment of the duty (*m*), by production of the Commissioners' receipt (*n*), by a production of a receipt for the legacy, or, in the case of an annuity, a receipt for the first four annual payments stamped with the amount of duty payable (*o*).

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Law for
Vol XV
p 85

(*h*) 57 & 58 Vict. c. 30, s. 8 (2), 18.

(*i*) *Att.-Gen. v. Beech*, (1898) 2 Q. B. 147; 67 L. J. Q. B. 585; 78 L. T. 584; 46 W. R. 435.

(*k*) 57 & 58 Vict. c. 30, s. 11 (1).

(*l*) The Legacy Duty Act, 1896; 36 Geo. 3, c. 52, s. 12.

(*m*) 36 Geo. 3, c. 52, s. 12.

(*n*) *Ibid.* s. 35.

(*o*) *Ibid.* s. 27.

(iv) Probate and Account Duties.

These duties, in the case of deaths prior to the 2nd August, 1894, have been superseded by estate duty. The payment of probate (or, in the case of intestacy, administration) duty took place at the time of the proof of the will or the grant of letters of administration. As probate and letters of administration are not granted until the duty has been paid (*p*), a purchaser may assume that where a will has been proved or letters of administration have been granted, this duty has been paid. The account duty formerly chargeable under the Customs and Inland Revenue Act, 1881 (*q*), was not made a charge upon the property in respect of which it was paid. No inquiry into the payment of this duty need, therefore, be made by a purchaser.

In the foregoing sketch the writers have only endeavoured to draw attention to some of those points in relation to death duties which are most likely to arise in the perusal of abstracts, and which it would be the duty of the solicitor to a purchaser or mortgagee to inquire into. To attempt any further account of this difficult subject would merely enlarge the size of this work without making any corresponding addition to its utility.

Requisitions.

1. *The receipts for the succession duties payable on the deaths of Miss A. and Mrs. B. must be produced.*

2. *The additional duty payable on the increased value of the property on the determination of the ninety-nine years' lease must be borne by the vendor. This duty must be commuted or otherwise provided for (*r*).*

3. *The succession duty which will become payable on the death of the annuitant must be commuted or otherwise provided for.*

4. *The death of Mrs. C. must be proved, and the receipts for the succession duty payable on her death and on the deaths*

(*p*) Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 30.

(*q*) *Ibid.* s. 38.

(*r*) *Re Kidd and Gibbons' Contract*, (1893) 1 Ch. 695; 62 L. J. Ch. 436; 68 L. T. 647; 41 W. R. 507; 3 R. 268.

of the several other annuitants who died after the Succession Duty Act came into force (s), must be produced.

5. *A. B. appears to have died within a year of the date of the voluntary conveyance to his wife. Estate duty therefore became payable on his death. The receipt for this duty must be produced.*

6. *Have the duties which became payable under the Finance Act, 1894, on the death of X. Y. been paid? A certificate of discharge of the Commissioners, or the receipts of the Inland Revenue office must be produced.*

DEBENTURES.

Debentures may be taken to include almost any instruments (other than mortgages in usual form, and acceptances) providing for the payment by a company of money at a future date. They usually, but not necessarily, have conditions indorsed subject to which they are issued, and which frequently effect a charge on the property of the company, either directly or by reference to a trust deed.

Debentures are sometimes issued as fixed charges, and sometimes as a floating security, and sometimes as a fixed charge on realty, and as a floating security as to other assets. A floating security is an equitable charge on the assets for the time being of the company as a going concern attaching to the subject charged in the varying condition in which it happens to be from time to time; until the debenture holders intervene, or a receiver is appointed, or a winding-up order is made, or resolution for winding-up passed, the company can deal with the property charged by such a security in any of the ways necessary for carrying on its business in the ordinary course (t).

If there is no agreement to suspend the right of the persons

(s) 19th May, 1853.

(t) *Wheatley v. Silkstone and Haigh Moor Coal Co.*, 29 Ch. D. 715; 54

L. J. Ch. 778; 52 L. T. 798; 33 W. R. 797.

in whose favour a floating charge is given, they may intervene at any time. The right to intervene is, however, usually, by the conditions indorsed on the debenture, limited by agreement to the occurrence of specified events.

Where a company issued debentures by which it undertook to pay the principal at a distant day, and interest on fixed days half-yearly, and charged by way of floating security all its property present and future, and a condition indorsed on the debentures provided that, notwithstanding the charge, the company might, in the course and for the purpose of its business, sell or otherwise deal with its property until default should be made in payment of interest for three months after the same should have become due, or until an order or resolution for winding-up, and the company after an instalment of interest had been due more than three months, but before the debenture holders had taken any step to enforce their security, by an issue of bonds mortgaged specific assets, it was held by the House of Lords upon the construction of the condition that after the expiration of the three months the debentures remained a floating security until the holders took some step to enforce them and prevent the company from dealing with its property, and that the debenture holders were not entitled to an injunction restraining the company from paying interest to the bondholders (*u*).

Every company has not power to borrow money or to mortgage, but express power is not required to enable a company to do so, and power is readily implied; thus, all trading companies have an implied power to borrow money for the purposes of their business (*x*).

When a title is offered dependent upon a mortgage given by a company, the following questions should be considered:—

(1) Has the company power to borrow, either expressed or implied by its being a trading company or otherwise? (2) Is

(*u*) *Governments Stock and other Securities Investment Co., Ltd. v. Manila Rail. Co., Ltd.*, (1897) A. C. 81; 66 L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353.

(*x*) *General Auction, Estate, and Monetary Co. v. Smith*, (1891) 3 Ch. 432; 60 L. J. Ch. 723; 65 L. T. 188; 40 W. R. 106.

the power general or limited to any particular purpose or amount? (3) Has the company power to mortgage the property in question? (4) If the company has issued debentures, do they constitute a legal charge on the property, and, if a floating charge, has any event happened to cause such floating charge to become effective.

Requisitions.

1. *A copy of the debentures issued by the A. B. Company, Limited, must be supplied, and the trust deed, if any, referred to therein must be abstracted.*

2. *Has any default been made or event happened which, under the conditions indorsed on the debentures or under the trust deed, gives the debenture holders the right to intervene?*

DEBTS.

See CHARGES BY WILL.

DECLARATIONS.

See VESTING DECLARATIONS AND ORDERS.

DEEDS.

Attestation of a deed is not usually necessary, but a deed executed before the 13th August, 1859, under a power must comply with the terms of that power regarding attestation. If executed on or since that date, attestation by two witnesses is sufficient (y).

In the case of marksmen, the deed usually contains a signed attestation clause showing that the mark was duly made by the party whose signature it represents, and that the deed was read over and explained to him, but there does not

(y) 22 & 23 Vict. c. 35, s. 12.

appear to be any authority to the effect that attestation is necessary even in this case.

The sealing and delivery of a deed are essential to its validity. Signing was not necessary prior to the Statute of Frauds, and it is a moot point whether it is now necessary when the subject-matter is within the Statute of Frauds (*y*). On the one hand Blackstone expresses an opinion that it is (*z*), while according to other authorities, such as Preston (*a*), it is not, and the decision in *Cooch v. Goodman* (*b*), if anything, adds to the doubt.

The alteration of a deed in a material particular after execution makes it void (*c*), but not so the filling in of the date or the names of occupiers of land conveyed, or similar additions consistent with the purpose of the deed, even if done by the party to whom it is delivered (*d*); and inasmuch as a deed cannot be altered after it is executed without fraud or wrong, it will be presumed, until the contrary is shown, that alterations or interlineations were made before execution (*e*).

The fact that a deed has been made void by its alteration in a material particular does not have the effect of revesting the estate in the person by whom it was conveyed (*f*).

See APPOINTMENTS — CONSIDERATION — COVENANTS — ESTOPPEL — REGISTRATION OF DEEDS AND WILLS — STAMPS — TITLE DEEDS.

Requisition.

It appears, on examining the deeds with the abstract, that the indenture of , 189 , has been altered in a material part.

What evidence does the vendor offer that such alteration was made prior to execution?

(*y*) 29 Car. 2, c. 3.

(*z*) Blackstone, 306.

(*a*) Shep. Touchstone, 56, n.

(*b*) 2 Q. B. 580; 2 G. & D. 159; 6 Jur. 779.

(*c*) *Sellin v. Price*, L. R. 2 Ex. 189; 36 L. J. Ex. 93; 16 L. T. 21; 15 W. R. 749.

(*d*) *Aldous v. Cornwall*, L. R. 3

Q. B. 573; 37 L. J. Q. B. 201; 16

W. R. 1045; 9 B. & S. 607; *Adsetts*

v. Hires, 9 L. T. 110; 33 Beav. 52;

9 Jur. (N. S.) 1063; 2 N. R. 474;

11 W. R. 1092.

(*e*) *Doe d. Tatum v. Catmore*, 16 Q. B. 745.

(*f*) *Ward Lord v. Lumley*, 5 H. & N. 656; 29 L. J. Ex. 372.

DEPOSIT OF TITLE DEEDS.*See EQUITABLE MORTGAGE.***DESCENT.**

The descent of real estate of inheritance in cases of death on or after the 1st January, 1834, is governed by the following rules :—

As regards both estates in fee simple and fee tail—

- (1) In every case descent is to be traced from the purchaser (defined to mean the person who last acquired the land otherwise than by descent or than by any escheat, partition, or inclosure, by the effect of which the land became part of or descendible in the same manner as other land acquired by descent) (*g*).
- (2) The estate descends in the first place lineally to the issue of the purchaser *ad infinitum*.
- (3) Males take before females of the same consanguinity to the purchaser.
- (4) Of two or more males of the same consanguinity, the eldest inherits, but females of equal consanguinity take together as coparceners.
- (5) Issue of the children of the purchaser represent (*i.e.*, take the place of) their ancestor *in infinitum*.

As regards estates in fee simple the following additional rules apply :—

- (6) On failure of the issue of the purchaser the inheritance goes to his nearest lineal ancestor (*h*).
- (7) Among lineal ancestors of the purchaser the paternal line is always preferred to the maternal (*i*).
- (8) The issue of an ancestor *in infinitum* represents such ancestor, but relations of the whole blood and their issue are preferred to relations of the half-blood (*k*).

(*g*) 3 & 4 Will. 4, c. 106, ss. 1, 2.

(*h*) *Ibid.* s. 6.

(*i*) *Ibid.* s. 7.

(*k*) *Ibid.* s. 9.

(9) On the failure of male paternal ancestors the mother of the more remote male paternal ancestor is preferred to the mother of the less remote male paternal ancestor, and the same rule applies to the mothers of male maternal ancestors.

(10) Where, in cases of death after the 13th August, 1859, there is a total failure of heirs of the purchaser, or where any land is descendible as if an ancestor had been the purchaser and there is a total failure of the heirs of such ancestor, the land descends as if the person last entitled had been the purchaser (*l*).

Where the real and personal estate of a man who dies intestate after the 1st September, 1890, leaving a widow but no issue, does not exceed 500*l.*, his widow takes such real and personal estate absolutely and exclusively (*m*); and where the net value of such real and personal estate exceeds 500*l.*, the widow of such intestate is entitled to a charge on 500*l.*, part thereof, and interest at four per cent. from the death of the intestate (*n*).

See BOROUGH ENGLISH—COPARCENERS—COPYHOLDS—CURTESY—DOWER AND FREEBENCH—ENTAIL—ESCHEAT—GAVELKIND—INTESTATES' ESTATES ACT, CHARGES UNDER—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Requisitions.

1. *A pedigree must be supplied showing that X. Y. was entitled as heir-at-law of A. B., and such pedigree must be verified in the usual manner.*

2. *Having regard to the rule of descent that [here state rule] it would appear that and not was entitled to succeed to Blackacre Farm as heir-at-law of X. Y. How does the vendor propose to overcome this objection?*

(*l*) 22 & 23 Vict. c. 35, ss. 19, 20.

(*m*) 53 & 54 Vict. c. 29, s. 1.
(*n*) *Ibid.* s. 2.

DEVISE.*See* WILLS.

DISABILITIES.

See ALIENS—COMPANIES REGISTERED UNDER THE COMPANIES ACT, 1862—CONVICTS, TRAITORS AND FELONS — INFANTS — INSANITY — LIMITATION, STATUTES OF—MARRIED WOMEN.

DISCLAIMER.

Primâ facie, every estate, whether given by will or otherwise, is supposed to be beneficial to the party to whom it is given, but the party to whom the gift is made may disclaim (*o*). In the absence of evidence of disclaimer, the estate will vest in the donee (*p*).

An estate may be disclaimed by conduct without any express declaration (*q*). It is, however, usual to put a disclaimer on record by the execution of a deed.

A married woman may, on or after the 1st October, 1845, by deed acknowledged, disclaim any estate or interest in hereditaments of any tenure (*r*). It would seem that, in respect of property acquired beneficially after 1882 by a woman whenever married, or acquired by a woman married after that date, a married woman may disclaim by conduct or by deed unacknowledged, but with regard to trust property no doubt a married woman must still disclaim by deed acknowledged (*s*).

(*o*) *Hurst v. Hurst*, 21 Ch. D. 278; 51 L. J. Ch. 729; 40 L. T. 899; 31 W. R. 327.

(*p*) *Re Arbib and Class's Contract*, (1891) 1 Ch. 601; 60 L. J. Ch. 263; 64 L. T. 217; 39 W. R. 305.

(*q*) *Re Birchall, Birchall v. Ashton*, 40 Ch. D. 436; 60 L. T. 369; 37

W. R. 387.

(*r*) 8 & 9 Vict. c. 106, s. 7.

(*s*) See, on the operation of the Married Women's Property Act with regard to trusts, *Re Harkness and Allsopp's Contract*, (1896) 2 Ch. 358; 65 L. J. Ch. 726; 74 L. T. 652; 44 W. R. 683.

A person to whom any power, whether coupled with an interest or not, is given, may, by deed executed after the 31st December, 1882, disclaim such power, and on such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the other persons to whom the power is given, unless the contrary is expressed in the instrument creating the power (*t*).

The trustee of a bankrupt's estate may disclaim onerous property by writing signed by him within twelve months after his appointment, or if such property shall not have come to his knowledge within one month after his appointment, then within twelve months after he first became aware of it (*u*). Leave of the Court is required to enable a trustee to disclaim a lease except in the following two cases:—(1) where the bankrupt has not sublet, mortgaged or charged the property, and (a) the rent and value of the property leased is less than 20*l.* per annum, or (b) where the estate is administered under sect. 121 of the Bankruptcy Act, 1883, or (c) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days require the matter to be brought before the Court; (2) where the bankrupt has sublet, mortgaged, or charged the demised premises, and the trustee serves the lessor and the sub-lessee or mortgagees with notice of his intention to disclaim, and none of them within fourteen days required the matter to be brought before the Court (*v*).

Requisitions.

1. *The disclaimer by A. B. of the trusts of the will of X. Y. must be proved by the production of a deed of disclaimer, or a statutory declaration must be made by some person conversant with the facts, proving that A. B. from the first disclaimed such trusts by his conduct, and has never acted therein.*

(*t*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 6.

(*u*) Bankruptcy Act, 1883 (46 & 47

Vict. c. 52), s. 55; Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 13.

(*v*) Bankruptcy Rules, 1890, r. 69.

2. *The order of the Court in the bankruptcy of X. Y. giving his trustee liberty to disclaim the lease of the High Street property should be abstracted in chief, and if an office copy thereof is in the possession of the vendors or their solicitors it should be produced.*

DISENTAILING ASSURANCE.

See ENTAIL.

DISTRINGAS AND STOP ORDER.

Persons claiming to be interested in any stocks, shares, or securities, or dividends thereon, standing in the books of the Bank of England or any other public company, whether incorporated or not, may, on filing an affidavit and notice in the Central Office, serve on such company a duplicate of the filed notice (*x*), which has the same force against the company as a writ of distringas under the Court of Chancery Act, 1841 (*y*), had against the Bank of England (*z*), that is to say, it entitles the person obtaining the order to a reasonable notice that unless he takes proceedings to assert his right the stock will be dealt with.

A stop order may be obtained on any moneys or securities in Court to the credit of an action, cause, or matter. The application may, in most cases, be made by summons (*a*). A stop order does not decide anything as to the rights of the parties (*b*). Where a fund is in Court, an incumbrancer on the interest of a beneficiary cannot effectually gain priority except by obtaining such an order (*c*).

(*x*) Ord. 46, r. 4.

(*y*) 5 Vict. c. 5, s. 5.

(*z*) Ord. 46, r. 8.

(*a*) *Ibid.* rr. 12, 13.

(*b*) *Hawkesley v. Gowan*, 11 L. T. 134; 12 W. R. 1100; *Lucas v.*

Peacock, 9 Beav. 177.

(*c*) *Pinnock v. Bailey*, 23 Ch. D. 497; 52 L. J. Ch. 880; 48 L. T. 811; 31 W. R. 912; *Mack v. Postle*, (1894) 2 Ch. 449; 63 L. J. Ch. 593; 71 L. T. 153; 8 R. 339.

Requisitions.

1. *The vendor must obtain from the trustees an authority for the purchaser to inquire whether the funds are free from restraint in the books of the several companies.*

2. *The mortgagor's solicitor must supply a certificate of the fund in Court in the action of A. v. B. showing that no stop order has been obtained thereon.*

DIVORCE.

The same consequences as to property follow a divorce as if the marriage contract had been annihilated and the marriage tie broken at its date (*d*) ; consequently, when the husband and wife are tenants by entireties, the effect of a decree absolute for dissolution of marriage is to make them joint tenants (*e*).

The rights to property under a settlement are not forfeited by the dissolution of a marriage (*f*), but on a divorce or judicial separation for adultery of the wife, if it appears that she is entitled to any property either in possession or reversion, the Court may order such settlement as it thinks reasonable to be made of such property or any part of it for the benefit of the innocent party and of the children of the marriage (*g*). And after a final decree of nullity of marriage or dissolution of marriage, the Court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may order the whole or a portion of the property settled to be applied either for the benefit of such parties or of the children of the marriage (*h*).

(*d*) *Wilkinson v. Gibson*, L. R. 4 Eq. 162 ; 36 L. J. Ch. 646 ; 16 L. T. 733 ; 15 W. R. 983.

(*e*) *Thornley v. Thornley*, (1893) 2 Ch. 229 ; 62 L. J. Ch. 370 ; 68 L. T. 199 ; 41 W. R. 541 ; 3 R. 311.

(*f*) *Fitzgerald v. Chapman*, 1 Ch. D. 563 ; 45 L. J. Ch. 23 ; 33 L. T. 587 ;

24 W. R. 130.

(*g*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45.

(*h*) Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5 ; Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 3.

The wife's right to dower is lost by dissolution of the marriage by the Court (i), as is also of course the husband's estate by the curtesy.

Requisition.

Was any order made for variation of the settlement of , 18 , consequent on the divorce of Mr. and Mrs. A. B.? and, if so, did such order affect the life interest contracted to be sold? An office copy of the order, if in the vendor's possession, must be produced.

DOUBTFUL TITLE.

The Court will not compel a man to purchase a law suit by forcing him to take a title which is fairly open to question (k).

DOWER AND FREEBENCH.

If a man who was married on or before the 1st January, 1834, died leaving a widow surviving, she was entitled to a life estate in one third part in value of the freehold lands of which her husband was, at any time during the coverture, seised for a legal estate of inheritance in possession, and which her issue, if any, by the husband could have inherited. This right was not affected by any disposition by the husband alone during his lifetime, or by will; and in order to defeat it, what are known as uses to bar dower had to be resorted to. The limitations in these uses gave the husband an overriding power of appointment by the exercise of which he was enabled to dispose of the property free from his wife's dower.

By the Dower Act (l), no woman married after the 1st January, 1834, is entitled to dower out of lands which her

(i) *Frampton v. Stephens*, 21 Ch. D. 164; 51 L. J. Ch. 562; 46 L. T. 617; 30 W. R. 726.

(k) *Rose v. Calland*, 5 Ves. jun. 186.
(l) 3 & 4 Will. 4, c. 105.

husband has absolutely disposed of in his lifetime, or by will; and when he has devised for her benefit any estate or interest in any lands out of which his widow would have been entitled to dower, she is not entitled to dower out of any of his lands unless a contrary intention is declared by the will (*m*); and the wife's right may be wholly or partially destroyed by a declaration made by the husband by deed or will (*n*); but the Act extends the right to dower, where it exists, to equitable estates in possession (*o*).

The rights of a woman married after the 1st January, 1834, would not, in the event of her husband dying intestate with respect to property conveyed to uses to bar dower, be affected by such uses (*p*).

Although cases in which dower attaches are now rare, inquiry should still be made by a purchaser whether a person who has been seised in fee simple or fee tail of the land contracted to be sold was married before 1834 to a wife still living. If it appears that he was, and he left a widow who is living, she must be required to join in the conveyance in order to release her dower, and if the vendor himself has a wife living to whom he was married before 1834, she must join in the conveyance to release her right, and the deed must be acknowledged by her. In cases within the Dower Act (*i.e.*, when marriage took place after the 1st January, 1834), it is sufficient to inquire, in the case where the owner of an estate has died intestate with regard to the property in question, whether he left a widow, and, if it appears that he did, proof of her death should be required unless the right to dower was barred by a declaration in a deed or will.

There is no dower in respect of an estate *pur autre vie* (*q*), nor of property held jointly.

The right to dower ceases to exist on a divorce (*r*).

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| <p>(<i>m</i>) 3 & 4 Will. 4, c. 105, ss. 4, 9.</p> <p>(<i>n</i>) <i>Ibid.</i> ss. 6, 7.</p> <p>(<i>o</i>) <i>Ibid.</i> s. 2.</p> <p>(<i>p</i>) <i>Ibid.</i></p> <p>(<i>q</i>) <i>Re Michell, Moore v. Moore,</i></p> | <p>(1892) 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.</p> <p>(<i>r</i>) Co. Litt. 32 a; <i>Frampton v. Stephens</i>, 21 Ch. D. 164; 51 L. J. Ch. 562; 46 L. T. 617; 30 W. R. 726.</p> |
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A widow cannot claim more than six years' arrears of dower (s), and after twelve years from the last receipt of income or acknowledgment of her right she loses her title to dower (t).

With regard to freebench, this can only exist in manors in which there is a special custom giving a wife such an interest in her husband's land. Inquiry should, therefore, be made, on a purchase of copyholds, whether any such custom exists, and what are the particulars and extent of it. As a rule freebench is defeated by the alienation of the land in the lifetime of the owner (u). The widow of a purchaser of copyholds who, in his lifetime, does not get admitted on the rolls as a legal owner, is not entitled to freebench (x). The freebench, if any, of persons married before the enfranchisement of lands which have been enfranchised under the provisions of the Copyhold Acts, is not lost by such enfranchisement (y).

See GAVELKIND—JOINTURE.

Requisitions.

1. *Was A. B. married before the 1st January, 1834? If so, inasmuch as the property was not conveyed to uses to bar dower, his wife must, if she is still alive, join in the conveyance in order to release her right to dower, and the succession duty which would become payable in respect of the increased value of the succession on her decease must be commuted or otherwise provided for. If she has died, proof of that fact must be given.*

2. *Although X. Y. was married since 1st January, 1834, his wife, if still alive, must (having regard to the fact that*

(s) The Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 41.

(t) The Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

(u) *Lacy v. Hill*, L. R. 19 Eq. 346; 44 L. J. Ch. 215; 32 L. T. 48; 23 W. R. 285.

(x) *Smith v. Adams*, 18 Jur. 968; 24 L. J. Ch. 258; 23 L. T. (O. S.) 325; 2 W. R. 698; 5 De G. M. & G. 712; 18 Beav. 499; 2 Eq. Rep. 1001.

(y) 4 & 5 Vict. c. 35, s. 79; 15 & 16 Vict. c. 51, s. 34; 57 & 58 Vict. c. 46, s. 21.

he died intestate, and that there does not appear to be any declaration barring dower in the conveyance to him) join in the conveyance. If she is dead, proof of that fact must be given.

3. *Does there exist any custom of the manor of B. by which the wife of a deceased copyholder is entitled to freebench? and, if so, does it apply to property conveyed by the husband in his lifetime, and what is the extent of such freebench?*

DRAINAGE.

See LAND IMPROVEMENT ACTS—SETTLED LAND.

DUTIES.

See DEATH DUTIES.

EASEMENTS AND PROFITS À PRENDRE.

An easement is a right unconnected with its profits enjoyed over property, known as the servient tenement, by a person in respect of his interest in other premises, known as the dominant tenement; instances of such rights are rights of light and of way.

Profits *à prendre* are rights of taking profits out of a tenement, such as the right of cutting turf or pasturage and of sporting or fishing.

Land which is subject to any easement or profit *à prendre* remains so subject in the hands of a purchaser, whether with or without notice thereof; on the other hand, a purchaser is entitled to the benefit of all easements, rights and advantages appertaining to the property purchased, and rights which are merely reputed to appertain to or are enjoyed with the property also pass by conveyances made after the 31st December, 1881, unless such rights are expressly excluded (s); but the

(s) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6.

section of the Conveyancing Act which so provides does not operate to create easements over property to which the grantor is not beneficially as well as legally entitled (*a*); nor does it entitle a purchaser to any of the rights specified if he is not entitled to them according to the proper construction of the contract (*b*).

On a severance of tenements belonging to the same owner, on the principle that a person is not allowed to derogate from his own grant, a conveyance to the grantee of one of such tenements is a conveyance of those continuous and apparent easements which have, in fact, been enjoyed with the property conveyed, but which, prior to the grant, were not strictly easements owing to the dominant and servient tenements belonging to the same owner (*c*). Where on a severance an easement is absolutely necessary to the enjoyment of either part of the severed tenement, an easement of necessity will be impliedly granted to the grantee, or reserved to the grantor, as the necessity may require (*d*); but a reservation even of continuous and apparent easements will not readily be implied in favour of the grantor (*e*).

Any easement which the mere inspection of the property would disclose or suggest is a patent defect, and would not form any defence to an action to compel the purchaser to complete the contract, but the existence of an easement of which no indication would be detected by such an inspection will in general be a good ground for resisting specific performance even though the sale purports to be subject to existing easements (*f*); but even if the easement be a latent

(*a*) *Beddington v. Atlee*, 35 Ch. D. 317; 56 L. J. Ch. 655; 56 L. T. 514; 35 W. R. 799; 51 J. P. 484.

(*b*) *Re Peck and London School Board*, (1893) 2 Ch. 315; 62 L. J. Ch. 598; 68 L. T. 847; 41 W. R. 388; 3 R. 511.

(*c*) *Polden v. Bastard*, L. R. 1 Q. B. 156; 35 L. J. Ex. 92; 13 L. T. 441; 14 W. R. 198.

(*d*) *Pyer v. Carter*, 1 H. & N. 916; 28 L. T. (O. S.) 371; 26 L. J. Ex. 258; 5 W. R. 371; *Pinnington v.*

Galland, 9 Ex. 1; 22 L. J. Ex. 349; 22 L. T. (O. S.) 41; 1 C. L. R. 819.

(*e*) *Wheeldon v. Burrows*, 12 Ch. D. 31; 48 L. J. Ch. 853; 41 L. T. 327; 48 W. R. 196; *Suffield v. Broun*, 33 L. J. Ch. 249; 9 L. T. 627; 12 W. R. 356; 10 Jur. (N. S.) 111; 3 N. R. 340; 4 De G. J. & S. 185.

(*f*) *Heywood v. Mallalieu*, 25 Ch. D. 357; 53 L. J. Ch. 492; 49 L. T. 658; 32 W. R. 538.

one, a purchaser will not be relieved from his contract if he was at the time he entered into it aware of the existence of such easement, unless the contract expressly provided that he should have a good title (*g*).

The right to an easement or profit *à prendre* may be acquired by prescription either (i) at common law, or (ii) under the Prescription Act, 1832 (*h*).

Prescription at Common Law.

If it be proved that the right has been enjoyed openly for twenty years, immemorial user may be presumed and a title acquired accordingly. Such presumption may, however, be rebutted by showing (1) that the exercise of the right actually commenced within legal memory, or (2) that from the nature of the user by the owner of the dominant tenement, or from the nature of the occupation, or from the incapacity of the owner of the servient tenement, the latter could not have resisted the user of the right, or (3) that the interest was enjoyed secretly and without the knowledge of the owner of the servient tenement, or (4) that the enjoyment was by the express licence of such owner.

Where uninterrupted enjoyment for twenty years or more is shown, but the presumption of immemorial user is rebutted by showing that the exercise of the right first commenced within legal memory, a grant made twenty or more years ago may be presumed (*i*). This presumption may be rebutted by showing (1) that from the nature of the user by the owner of the dominant tenement, or from the nature of the occupation by the owner of the servient tenement, the user of the right could not have been resisted by the latter, or (2) that the easement was enjoyed secretly and without the knowledge of the owner of the servient tenement, or (3) that the enjoyment was by express licence of the owner

(*g*) *Re Gloag and Miller's Contract*,
23 Ch. D. 320; 52 L. J. Ch. 654;
48 L. T. 629; 31 W. R. 601.

(*h*) 2 & 3 Will. 4, c. 71.

(*i*) *Rex v. Joliffe*, 1 L. J. (O. S.)
K. B. 232; 26 R. R. 264; 2 Barn. &
Cress. 54; 3 Dowl. & Ry. 240.

of the servient tenement, or (4) that at the time at which the grant would be presumed to have been made, the owner of the servient tenement was under disability and consequently incapable of making the grant.

The presumption of a lost grant applies only to an owner in fee simple, and it will not be presumed that a tenant for years has made a grant to the owner of a dominant tenement for as long as his term of years lasts (*k*).

Prescription under the Prescription Act, 1832

(2 & 3 Will. 4, c. 71).

(i) *Light*.—When the use of light for any building has, without interruption, been enjoyed for twenty years next before some suit or action in which it is brought into question, the right to it is deemed absolute and indefeasible unless it appears that it was enjoyed by consent or agreement expressly made or given for that purpose by deed or writing (*l*).

The period of twenty years commences from when the exterior walls of the building with the spaces for the windows are completed and the building is properly roofed in, although the window sashes and the glass may not be put in, and the interior may not be finished until some time after (*m*); and no act is deemed an interruption unless it is submitted to or acquiesced in for a year after the party interrupted has notice of the interruption, and of the person authorizing the interruption to be made (*n*).

A curious consequence of the joint operation of sects. 3 and 4 of the Prescription Act is that, if the user of light has been enjoyed for nineteen years and a day, there is acquired an inchoate right which cannot be defeated if an action is brought immediately upon the expiration of the twenty years, as the interruption will not then have lasted for a year (*o*);

(*k*) *Wheaton v. Maple & Co.*, (1893) 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*l*) 2 & 3 Will. 4, c. 71, ss. 3, 4.

(*m*) *Collis v. Laugher*, (1894) 3 Ch. 659; 63 L. J. Ch. 851; 71 L. T.

226; 43 W. R. 202; 8 R. 760.

(*n*) 2 & 3 Will. 4, c. 71, s. 4.

(*o*) *Flight v. Thomas*, 5 Jur. 811; 8 C. & F. 231; West, 671; 11 Adol. & E. 688.

but an injunction cannot be obtained until the twenty years have elapsed (*p*).

Neither infancy, unsoundness of mind, nor any other disability prevents the right being acquired, and, when once acquired, it binds all persons having an interest in the land. As the Crown is not mentioned in sect. 3, and neither sect. 1 nor sect. 2 applies to the easement of light, the right to light is not acquired by twenty years' enjoyment over Crown property (*q*): and as easements acquired by prescription, lost grant, and under the Prescription Act affect the fee simple of the servient tenement, no easement of light can be acquired against any tenant of Crown lands (*r*).

(ii) *Ways and other Easements*.—These include, it would seem, not only easements of the same nature as a right of way, but all other easements known to the law, *e.g.*, a right of support (*s*), but not a right to light which is dealt with by a separate section (*t*).

These easements may be acquired under the Prescription Act, 1832 (*u*), in two ways—

(1) By enjoyment for twenty years, and the absence of evidence of facts by which a claim at common law might be defeated. The twenty years' enjoyment must be prior to action and without interruption lasting for one year (*x*). In reckoning the twenty years, the time during which any person otherwise capable of resisting a claim was infant, *non compos mentis*, a *feme covert*, or tenant for life, or during which any action or suit has been pending which has been diligently prosecuted until abated by the death of any party thereto, is excluded (*y*).

(*p*) *Bridewell Hospital v. Ward*, 62 L. J. Ch. 270; 68 L. T. 212; 3 R. 228.

(*q*) *Perry v. Eames*, (1891) 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; 39 W. R. 602; *Wheaton v. Maple & Co.*, (1893) 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*r*) *Wheaton v. Maple & Co.*, (1893) 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*s*) *Dalton v. Angus*, 6 App. Cas.

740, *per* Lord Selborne, 798; 50 L. J. Q. B. 689; 44 L. T. 484; 30 W. R. 191.

(*t*) The Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 3; *Perry v. Eames*, (1891) 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; 39 W. R. 602; *Wheaton v. Maple & Co.*, (1893) 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*u*) 2 & 3 Will. 4, c. 71.

(*x*) *Ibid.* s. 2.

(*y*) *Ibid.* s. 7.

The claim may be defeated by showing that from the nature of the user by the owner of the dominant tenement, or of the occupation by the owner of the servient tenement, the latter could not have resisted the user of the right, or by showing that the easement was enjoyed secretly and without the knowledge of the owner of the servient tenement or that the enjoyment was by his express licence.

(2) By forty years' enjoyment in spite of any evidence such as would defeat the claim at common law, other than proof that the enjoyment was under some consent or agreement expressly given or made for that purpose by deed or writing (z). The forty years' enjoyment must be prior to action without interruption lasting for one year. No disability prevents the right being acquired, and when once acquired it binds all persons having an interest in the land (a); but in the case of any way or other "convenient" watercourse, or use of water, the time during which the servient tenement was held under any term of life or term of years exceeding three years from the granting of such term must be excluded from the computation of the forty years, in case the claim is within three years from the expiration or sooner determination of the term resisted by the person entitled in "reversion" (b), which expression, in the section, does not include remainder (c). The word "convenient" is probably a misprint for "easement" (d).

The provisions of the Act relating to the acquisition of easements other than light are binding upon the Crown (e).

(iii) *Profits à prendre*.—These may be acquired under the Prescription Act, 1832 (f), in two ways, viz. :—

(1) By thirty years' enjoyment prior to action without interruption lasting for one year (g). In reckoning the

(z) 2 & 3 Will. 4, c. 71, s. 2.

(a) *Ibid.* s. 7.

(b) *Ibid.* s. 8.

(c) *Laird v. Briggs*, 19 Ch. D. 22; 45 L. T. 238; *Symons v. Leaker*, 15 Q. B. D. 629; 54 L. J. Q. B. 480; 53 L. T. 227; 33 W. R. 875; 49 J. P. 775.

(d) *Wright v. Williams*, 1 M. & W. 77; Tyr. & G. 375; 1 Gale, 410; *Laird v. Briggs*, 19 Ch. D. 22, at p. 33; 45 L. T. 238.

(e) 2 & 3 Will. 4, c. 71, s. 2.

(f) 2 & 3 Will. 4, c. 71.

(g) *Ibid.* s. 1.

thirty years, the time during which any person otherwise capable of resisting a claim was infant, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit has been pending, which has been diligently prosecuted until abated by the death of any party thereto, must be excluded (*h*). The claim may be defeated by showing that from the nature of the user by the owner of the dominant tenement or from the occupation of the owner of the servient tenement, the latter could not have resisted the user of the right; or by showing that the easement was enjoyed secretly and without his knowledge, or that the enjoyment was by his express licence (*i*).

(2) By sixty years' enjoyment prior to action without interruption lasting for one year, unless it appears that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose in writing (*k*). No disability prevents the right being acquired, and when once acquired it binds all persons having an interest in the land (*l*).

The provisions of the Act relating to the acquisition of *profits à prendre* are binding upon the Crown (*k*).

Requisitions.

1. *So far as the vendor or his solicitor are aware, is the property contracted to be sold subject to any easements or rights in the nature of easements?*

2. *What, if any, rights or easements affecting the property, such as referred to in Condition No. , in fact exist?*

3. *It is understood that a ground floor window of the adjoining house overlooks the property contracted to be sold. Is there any right of light in connection with this window?*

4. *There appears to be a footpath running across the*

(*h*) 2 & 3 Will. 4, c. 71, s. 7.

(*i*) *Ibid.* s. 1.

(*k*) *Ibid.* s. 1.

(*l*) *Ibid.* s. 7.

north-east corner of the property contracted to be sold. Is there a right of way along this footpath for any, and if so, for what persons and purposes?

5. *It appears from the abstract that the adjoining property formerly belonged to the same owner as the property now contracted to be sold. Is the vendor aware of any easement or convenience in the nature of an easement which was implied or reserved upon the severance of the tenements?*

6. *There is a telegraph or telephone wire passing over the property sold. To whom does the same belong? Is any rent paid therefor? Is there any easement in connection with it?*

7. *The property purchased appears to adjoin a common. Are there any rights of common appendant or appurtenant to the property?*

8. *Has any person any rights of fishing in or of passing along the portion of the river Avon which runs through the property?*

ENFRANCHISEMENT OF COPYHOLDS.

An enfranchisement may be effected either under the Copyhold Acts, or independently of the Acts by agreement.

Where an enfranchisement is made under the Copyhold Act, 1894 (*m*), or the Acts which it replaces, the enfranchisement does not affect the rights or interests of any person in the land enfranchised; but those rights and interests continue to attach upon the land enfranchised, in the same way, as nearly as may be, as if the freehold had been comprised in the instrument or disposition under which the person claims (*n*).

(*m*) 57 & 58 Vict. c. 46.

(*n*) The Copyhold Act, 1841 (4 & 5 Vict. c. 35), s. 81; The Copyhold Act,

1852 (15 & 16 Vict. c. 51), s. 46; The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 21 (2).

The statutory enfranchisement can be effected by a lord, notwithstanding that his estate is a limited estate only (*o*), and notwithstanding that he is a trustee (*p*). It is carried out under the supervision of the Board of Agriculture, and the execution by that Board of the deed of enfranchisement is conclusive evidence that all the requirements of the Act with respect to proceedings to be taken have been complied with (*q*). The tenant still continues entitled to any commonable right in respect of the land enfranchised (*r*), and the estate or right of the lord or tenant in or to any mines or minerals are unaffected without the express consent of the lord or tenant respectively (*s*).

An enfranchisement made independently of the Act is effected by a conveyance of the lord's freehold to the copyhold tenant, whereupon the copyholder's estate is merged. Where, therefore, the copyholder is tenant in tail, the effect of enfranchisement is to make the former copyholder tenant in fee simple, and to bar remainders over of the copyhold estate (*t*).

Where the lord is a tenant for life within the meaning of the Settled Land Acts, he can sell the freehold and inheritance of any copyhold land parcel of the manor, with or without any exception or reservation of mines or minerals, so as to effect an enfranchisement (*u*); and where the copyholder is a tenant for life within the meaning of the Settled Land Acts, capital money arising under the Acts can be expended upon the enfranchisement of the copyholds comprised in the settlement (*x*).

Enfranchisement deeds must be registered in Middlesex or Yorkshire, if they enfranchise copyholds situate in either of

(*o*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 39; Copyhold Act, 1894 (57 & 58 Vict. c. 16), s. 43.

(*p*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), ss. 39, 40; Copyhold Act, 1894 (57 & 58 Vict. c. 16), s. 44.

(*q*) Copyhold Act, 1852 (15 & 16 Vict. c. 51), s. 33; Copyhold Act, 1894 (57 & 58 Vict. c. 16), s. 61.

(*r*) 4 & 5 Vict. c. 35, s. 81; 15 & 16

Vict. c. 51, s. 45; 57 & 58 Vict. c. 46, s. 22.

(*s*) 15 & 16 Vict. c. 51, s. 48; 57 & 58 Vict. c. 46, s. 23.

(*t*) *Ex parte School Board of London, Re Hart*, 41 Ch. D. 547; 58 L. J. Ch. 752; 60 L. T. 817; 38 W. R. 61.

(*u*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3 (ii).

(*x*) *Ibid.* s. 21 (v).

these counties, though the Registry Acts do not extend to copyholds.

In the cases of sales, after the 31st December, 1881, of enfranchised copyholds, a purchaser has not, apart from special contract, the right to call for the title to make the enfranchisement (*y*).

See COPYHOLDS.

Requisitions.

1. *The copyhold title prior to enfranchisement must be adduced.*

2. *The receipt for the consideration for the enfranchisement must be abstracted and produced.*

3. *The land being copyholds enfranchised under the Copyhold Acts, the mines and minerals belong to the lord of the manor; his title must be shown and concurrence obtained.*

ENROLMENT.

The principal instruments which require enrolment for their validity are—

- (1) Bargains and sales of estates of inheritance in freeholds made after July, 1536 (*z*).
- (2) Gifts of hereditaments of any tenure for any charitable uses from and after the 24th June, 1736 (*a*).
- (3) Assurances under the Fines and Recoveries Act, 1833, by a “tenant in tail” (as defined by the Act), except leases at a rack rent, or five-sixth parts at least of a rack rent, for a term not exceeding twenty-one years, to commence within a year from the date of the lease (*b*).

(*y*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (2).

(*z*) The Statute of Enrolments (27 Hen. 8, c. 16).

(*a*) The Charitable Uses Act, 1735

(9 Geo. 2, c. 36); The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42).

(*b*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 41.

- (4) Consents of protectors to the dispositions of tenants in tail (c).

The foregoing instruments have now to be enrolled in the Central Office of the Supreme Court within six months of their execution, and if not so enrolled they are void (d). Formerly, bargains and sales were enrolled in one of the Courts of Record at Westminster, and gifts to charities and assurances under the Fines and Recoveries Act, 1833, in the Court of Chancery.

Enrolment was formerly necessary in a few other cases, for instance—

- (1) Before the repeal of the Usury Laws (e), certain annuities were void unless a memorial was duly enrolled in the Court of Chancery (f).
- (2) Recognizances prior to the Judgments Act, 1860, were a charge upon the debtor's lands (g), and the Statute of Frauds (h) provided that from and after the 24th June, 1677, no recognizance should bind any lands, tenements, or hereditaments in the hands of a *bonâ fide* purchaser for value, but from the time when such recognizance should be duly enrolled.

See ENTAIL—MORTMAIN AND CHARITABLE USES.

Requisitions.

1. *The vendor must execute a disentailing assurance which must be enrolled in the Central Office of the Supreme Court within six months.*

2. *The indenture of _____, 189 _____, does not appear to have been enrolled within the necessary period. How does the vendor propose to remedy this defect in title?*

(c) Fines and Recoveries Act, 1833
(3 & 4 Will. 4, c. 74), s. 46.

(d) 42 & 43 Vict. c. 78.

(e) 17 & 18 Vict. c. 90.

(f) 17 Geo. 3, c. 26; 53 Geo. 3,

c. 141; 3 Geo. 4, c. 92; 7 Geo. 4, c. 75.

(g) The Statute of Westminster the Second (13 Edw. 1, c. 18); and Bacon's Abridgment, Execution B.

(h) 29 Car. 2, c. 3, s. 18.

ENTAIL.

In order to create an estate tail by deed before the 1st January, 1882, it was absolutely necessary (1) that the word "heirs" should be used, the word being in all cases necessary to the creation of an estate of inheritance, and (2) that words of procreation confined to the body of the donee in tail should be used; thus a gift to A. and his heirs lawfully begotten would give an estate in fee simple to A. (i). In the case of a will, however, no formal words were ever necessary. And now on and after the 1st January, 1882, estates tail may be limited by deed, as well as by will, by means of the words "in tail," "in tail male," "in tail female," and if these expressions are used there is no necessity for the use of the word "heirs" (k).

The following limitations in a will always created an estate tail:—

To A. and the heirs of his body.

To A. and his issue.

To A. and his seed (l).

To A. and his heirs lawfully begotten.

To A. and his children, A. having no children
at the time of the execution of the will (m).

To A. in tail.

And before the Wills Act, 1837 (n), to A.,
and if he die without issue over.

The above list is not intended to be exhaustive, but only to indicate some of the more common forms of limitations which have been held to create estates tail. In limiting an estate tail either by deed or will, the issue in tail capable of inheriting may be confined to the issue by a particular husband or wife, or may be limited to the male issue in tail, or to the female issue in tail.

Where realty is devised to several persons as tenants in

(i) Bacon's Abridgment, Estate Tail B.

(k) Conveyancing Act (44 & 45 Vict. c. 41), s. 51.

(l) Co. Litt. 9 b.

(m) *Wild's Case*, 6 Rep. 16 b; Tu. L. C. 361.

(n) 7 Will. 4 and 1 Vict. c. 26, s. 29.

common in tail with a limitation over on failure of issue of all such persons, cross remainders in tail are implied (*o*).

A tenant in tail has always had power to dispose of his estate for any period not exceeding his own life, and under a statute of Henry VIII., prior to the 1st November, 1856, had power by deed to make leases for a period not exceeding twenty-one years or three lives (*p*); but such leases, though binding upon the issue in tail, were not binding upon the reversioners or remaindermen (*q*). A tenant in tail could formerly dispose of the fee simple of the estate of which he was tenant in tail by instituting a fictitious suit (*r*). These powers were abolished at the end of 1833 by the Fines and Recoveries Act (*s*), which provides that a tenant in tail may dispose of lands by any disposition made or evidenced by deed in the same way as if such tenant in tail had been a tenant in fee simple, but such deed must be duly enrolled within six calendar months of execution, unless it be a lease at a rack rent, or five-sixths parts of a rack rent, for a term not exceeding twenty-one years to commence within a year from the date of the lease (*t*).

In order to effectually bar an entail, in all cases where there is a protector, his consent must be obtained, as the persons entitled in reversion or remainder will not be bound without it (*u*). The first person, other than a lessee at a rent, tenant in dower or bare trustee, who takes under a settlement an estate for years, determinable on a life or lives, or any greater estate, not being merely an estate for years, is the protector of the settlement jointly with the persons (if any) appointed as such by the settlement (*x*). The consent of the protector or protectors, if any, must be given either by the assurance by which the disposition is effected, or by a separate deed, and in the latter case the separate deed must

(*o*) *Doe d. Gorges v. Webb*, 1 Taunt. 234; 9 R. R. 754.

(*p*) 32 Hen. 8, c. 28, s. 2; 19 & 20 Vict. c. 120.

(*q*) Co. Litt. 45 b.

(*r*) See *Fines and Recoveries*.

(*s*) 3 & 4 Will. 4, c. 74.

(*t*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 15 and 41.

(*u*) *Ibid.* s. 34.

(*x*) *Ibid.* ss. 22, 26, 27, 28.

be executed on or before the day on which such assurance is made and must be enrolled at or before the time when the assurance is enrolled (*y*). A protector is not in a fiduciary position, and may therefore sell his consent (*z*).

The effect of barring an estate tail without the consent of the protector is to create a base fee. A base fee has all the incidents of an estate in fee simple except that it terminates at the same time as the original estate tail would have terminated. A base fee may, by deed enrolled, be turned into a fee simple by the person who would have been tenant in tail had the estate not been barred (*a*); the consent of the protector, if any, is requisite (*b*). If a base fee and the reversion or remainder in fee simple expectant thereon become united in the same person the base fee is thereupon enlarged into a fee simple (*c*).

Estates tail granted by the Crown in reward for service and estates tail after possibility of issue extinct cannot be barred (*d*); nor could they before the Fines and Recoveries Act, 1833 (*e*).

The provisions of the Fines and Recoveries Act, 1833, relating to the barring of entails extend to equitable as well as legal estates in freeholds. As regards copyholds where there is a custom to entail, the mode of barring the entail prescribed by the Act is by surrender, or, in the case of equitable estates, by deed or surrender; but the consent of the protector is still requisite. Entry on the court rolls within six calendar months after the deed is executed or the surrender takes place is substituted for enrolment (*f*).

On the bankruptcy of a tenant in tail, the trustee in bankruptcy may deal with the estate of the bankrupt in the same manner as the bankrupt might have dealt with it (*g*).

A tenant in tail has the powers of a tenant for life under

(*y*) 3 & 4 Will. 4, c. 74, ss. 42, 46.

(*z*) *Banks v. Le Despencer*, 9 L. J. Ch. 185; 4 Jur. 601; 11 Sim. 508.

(*a*) 3 & 4 Will. 4, c. 74, ss. 1, 15.

(*b*) *Ibid.* s. 34.

(*c*) *Ibid.* s. 39.

(*d*) *Ibid.* s. 18.

(*e*) 34 & 35 Hen. 8, c. 20.

(*f*) 3 & 4 Will. 4, c. 74, ss. 50—54.

(*g*) *Ibid.* ss. 56—73; The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 56.

the Settled Land Acts notwithstanding that he may be restrained by Act of Parliament from barring or defeating his estate tail, and notwithstanding that the reversion is in the Crown, and notwithstanding that the possibility of issue in tail is extinct (*g*).

Although a tenant in tail may, by a sale under the Settled Land Act, bind the Crown, he cannot dispose of land purchased with money provided by Parliament in consideration of public services if restrained by statute from barring or defeating his estate tail (*h*).

A person entitled to a base fee has also the powers of a tenant for life although the reversion may be in the Crown, and so that the exercise by him of his powers binds the Crown (*i*).

In cases where the rights of a tenant in tail are barred under the Real Property Limitation Acts, 1833 or 1874, all persons whom the tenant in tail might have barred lose their rights (*k*), and where time has begun to run against a tenant in tail, it will continue to run against persons whose rights such tenant in tail might have barred notwithstanding they may be under disability (*l*); and where a tenant in tail has died, such persons can only recover within the time during which they might have recovered if they had continued to live (*m*). Where a tenant in tail has made an assurance which does not bar estates taking effect after or in defeasance of his estate tail, the rights of the remaindermen or reversioners will be barred twelve years after the earliest time when such assurance would have barred their rights had it then been executed by the person who would have been entitled to his estate tail if such assurance had not been executed (*n*).

Estates tail are subject to dower in the same way as estates in fee simple, but in the case of women married after the 31st December, 1833, the dower may be barred by a declara-

(*g*) 45 & 46 Vict. c. 38, s. 58 (1) (i) (vii).

(*h*) *Ibid.* s. 58 (1) (i).

(*i*) *Ibid.* s. 58 (1) (iii).

(*k*) 3 & 4 Will. 4, c. 27, s. 21.

(*l*) *Goodall v. Skerratt*, 24 L. J. Ch. 323; 23 L. T. (O. S.) 6; 3 W. R. 152; 1 Jur. (N. S.) 57; 3 Drew. 216; 3 Eq. R. 295.

(*m*) 3 & 4 Will. 4, c. 27, s. 22.

(*n*) 37 & 38 Vict. c. 57, s. 6.

tion by the husband against dower in a deed or will (o). Dower does not attach unless the wife might have had issue who could have inherited the fee tail (p); the right to it is lost by divorce. When issue is born alive capable of inheriting a husband is entitled to curtesy out of his wife's estate tail.

An estate tail cannot be disposed of by will. An estate in tail general or special descends in all respects like a fee simple, except that it is confined to the issue of the person or persons named. An estate in tail male descends only to male issue who trace their descent entirely through males, and an estate in tail female descends only to female issue who trace their descent entirely through females (q).

Notwithstanding the provisions of the Fines and Recoveries Act, 1833, purporting to exclude the jurisdiction of the Court with regard to specific performance of contracts in cases of disposition of lands by tenants in tail (r), the Court may decree specific performance of a contract for disentailment entered into by a tenant in tail (s).

See ENROLMENT—SETTLED LAND.

Requisitions.

1. *The disentailing assurance recently executed by the vendor must be duly enrolled before completion of the conveyance to the purchaser.*

2. *Under the limitations of the deed of 18, Mrs. A. became tenant in tail in possession. Her husband, who is now entitled to an estate by the curtesy, must concur in the assurance to the purchaser; he must also, as protector of the settlement, consent to the disentailing assurance.*

3. *Evidence must be adduced to show that A. B., the late tenant in tail, died without issue.*

(o) Dower Act, 1833 (3 & 4 Will. 4, c. 105), ss. 6, 7.

(p) Co. Litt. 31 a.

(q) Burton, s. 649.

(r) 3 & 4 Will. 4, c. 74, s. 47.

(s) *Bankes v. Small*, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765.

4. *Evidence must be furnished that the surrender and admittance of 18 made to bar the entail created by the settlement of 18 were entered upon the court rolls within six months after the surrender took place.*

EQUITABLE ESTATES.

Equitable estates are, in general, subject to the same rules as legal estates, and descend in the same way. The equitable estates of married women are subject to their husbands' curtesy, but prior to the Dower Act, 1833 (*s*), the husband's equitable estates were not subject to dower.

Equitable estates are free from any technical rules which depend upon incidents of tenure, thus, an equitable contingent remainder will not fail for the want of a particular estate to support it. Again, an equitable estate or interest was not, prior to the 14th August, 1884, liable to escheat (*t*).

No formality was required before the Statute of Frauds to a declaration of trust, or to the transfer of an equitable estate; but that statute provided that declarations of trust of lands, tenements, and hereditaments, including chattels real (*u*) and copyholds (*x*), should be proved by some writing signed by the person who is by law enabled to declare such trusts, or else they should be void (*y*). This does not apply to trusts arising by construction, implication, or operation of law (*z*).

A contract for sale binding both parties makes the vendor at once a trustee for the purchaser, and thus gives the equitable interest to the purchaser. The Statute of Frauds requires any contract relating to lands or any interest therein to be in writing signed by the party to be charged therewith (*a*).

(*s*) 3 & 4 Will. 4, c. 105.

(*t*) Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71).

(*u*) *Forster v. Hale*, 5 Ves. jun. 308; 4 R. R. 128.

(*x*) *Withers v. Withers*, Amb. 151.

(*y*) 29 Car. 2, c. 3, s. 7.

(*z*) *Ibid.* s. 8.

(*a*) *Ibid.* s. 4.

All assignments of equitable interests are void unless in writing signed by the assignor (*b*).

A deed is necessary to convey an equitable interest in the case of a disentailing assurance under the Fines and Recoveries Act, 1833 (*c*), and equitable interests of married women, which must be conveyed by deed acknowledged under the Fines and Recoveries Act, 1833 (*c*), the Real Property Act, 1845 (*d*), or the Married Women's Reversionary Interests Act, 1857 (*e*).

Since no formality is necessary to the transfer of an equitable interest, an equity of redemption may be transferred by a binding agreement and a receipt for the purchase-money, so also a receipt for the mortgage money in the case of a mortgage of an equity of redemption is sufficient discharge without any reconveyance.

If a *bonâ fide* purchaser for valuable consideration acquire a legal estate or interest in any property without notice of an equitable estate or interest, he will be entitled to retain the property free from the equitable estate or interest of which he had no notice. This rule is a great protection to a purchaser, and he should, in the absence of any circumstances appearing which give rise to suspicion, rely upon it and abstain from making any such requisition as—"Was the money which is stated to have belonged to the mortgagees on a joint account in fact trust money?"

Where trustees advance trust money on mortgage, it is the usual practice to keep off the title all reference to the trust. If, however, this course be not adopted a purchaser or transferee should require production of the settlement in order to satisfy himself that it contains nothing interfering with the power of the trustees to sell or transfer, as the case may be.

See EQUITABLE MORTGAGES — ESCHEAT — MARRIED WOMEN—MORTGAGES—NOTICE—SETTLED LAND.

(*b*) 29 Car. 2, c. 3, s. 9.
(*c*) 3 & 4 Will. 4, c. 74.

(*d*) 8 & 9 Vict. c. 106, ss. 6, 7.
(*e*) 20 & 21 Vict. c. 57.

Requisitions.

1. *The sale to the vendor is stated to be in pursuance of an agreement "in writing." As the purchaser has notice of this agreement, it must be abstracted and produced.*

2. *The vendor has only the equitable estate in the premises, the legal estate appears to be outstanding in the legal personal representatives of A. B., deceased, who must concur in the conveyance to the purchaser.*

3. *The mortgage money being expressed to be held subject to the trusts of an indenture of 18 , such indenture must be produced for the inspection of the purchaser's solicitor in order that he may satisfy himself that it contains nothing affecting the vendor's power to make a good title, and a statutory acknowledgment of the right of the purchaser to the production of such indenture must be given.*

EQUITABLE MORTGAGES.

Notwithstanding the provisions of the Statute of Frauds (*f*), equitable mortgages of land may be effected without writing by a deposit of title deeds (*g*).

An equitable mortgagee under a mortgage or charge under seal executed on or after the 28th August, 1860, had, under Lord Cranworth's Act (*h*), power to sell after the expiration of a year after the principal became payable, or when any interest has been in arrear for six months, or after an omission to pay a premium on any assurance payable under the mortgage deed. Lord Cranworth's Act was repealed by the Conveyancing Act, 1881, which provides (*i*) that in respect of mortgage deeds executed on or after the 1st January, 1882, a mortgagee where the mortgage is made by deed shall have power to sell; but the Act requires either notice to have been served on the mortgagor, and default made for three months

(*f*) 29 Car. 2, c. 3, s. 4.

(*g*) *Russel v. Russel*, 1 B. C. C. 269;
2 W. & T. 76.

(*h*) 23 & 24 Vict. c. 145, s. 11.

(*i*) 44 & 45 Vict. c. 41, s. 19.

or some interest to be in arrear for two months, or the breach of some provision contained in the mortgage deed other than a covenant for payment of mortgage money or interest (*k*).

An equitable mortgagee in fee by deed selling under the power contained in Lord Cranworth's Act (*l*) could convey the legal estate which was in his mortgagor (*m*); but an equitable mortgagee selling under the Conveyancing Act (*n*) has not this power (*o*), although it may, since the 31st December, 1882, be conferred by means of an irrevocable power of attorney (*p*).

An equitable mortgagee who parts with or does not obtain possession of the title deeds will be postponed to a subsequent equitable mortgagee who advances money on the security of the deeds without notice of the prior equitable mortgage (*q*). It requires the most gross negligence, if not fraud, to induce the Court to postpone a legal mortgagee who has parted with or not obtained possession of the title deeds (*r*).

See EQUITABLE ESTATES—MORTGAGES—TACKING.

Requisition.

The charge on Blackacre in favour of the vendor contains no express power of sale, and does not appear to be under seal. It is presumed that the vendor can procure the concurrence of the mortgagor. If not, how is it proposed to make a title?

EQUITY OF REDEMPTION.

See EQUITABLE ESTATES.

(*k*) 44 & 45 Vict. c. 41, s. 20.

(*l*) 23 & 24 Vict. c. 145, ss. 11, 15.

(*m*) *Re Solomon and Meagher's Contract*, 40 Ch. D. 508; 58 L. J. Ch. 339; 60 L. T. 487; 37 W. R. 331.

(*n*) 44 & 45 Vict. c. 41, s. 19.

(*o*) *Re Hodson and Howe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.

(*p*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.

(*q*) *Waldron v. Sloper*, 1 Drew. 193; *Keate v. Phillips*, 18 Ch. D. 560; 50 L. J. Ch. 664; 44 L. T. 731; 29 W. R. 710.

(*r*) *Hewitt v. Loosemore*, 21 L. J. Ch. 69; 9 Ha. 449; 6 W. R. 637.

ERASURE.*See* DEEDS—WILLS.**ESCHEAT.**

On the death of a tenant in fee simple without heirs and without having disposed by will of the estate, it escheats to the Crown or other chief lord entitled to the seignory. In the case of copyhold property, the chief lord is the lord of the manor. Formerly, equitable estates and incorporeal interests were not liable to escheat, but since the 14th August, 1884, inclusive, the law of escheat applies to them in the same manner as to corporeal hereditaments (*s*).

See CONVICTS, TRAITORS AND FELONS.**Requisition.**

A. B., the predecessor in title of the vendor, appears to have become entitled through the death without heirs, before the 14th August, 1884, of C. D., his cestui que trust. What proof does the vendor offer of the fact that C. D. had no heirs?

ESTATE CLAUSE.*See* DEEDS.**ESTATE DUTY.***See* DEATH DUTIES.**ESTATE TAIL.***See* ENTAIL.

(*s*) The Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71).

ESTOPPEL.

A judgment of a Court of record *inter partes* is conclusive as between parties and persons claiming under them (*t*). The modern County Court is a Court of record, its judgments, therefore, upon matters within its jurisdiction, are conclusive *inter partes*.

The nature of estoppel by representation cannot be better described than in the language of Lord Selborne in *The Citizens' Bank of Louisiana v. The First National Bank of New Orleans* (*u*). "I apprehend that nothing can be more certain than this, that the doctrine of equitable estoppel by representation is a wholly different thing from contract, or promise, or equitable assignment, or anything of that sort. The foundation of that doctrine, which is a very important one, and certainly not one likely to be departed from, is this, that if a man dealing with another for value makes statements to him as to existing facts, which being stated would affect the contract, and without reliance upon which, or without the statement of which, the party would not enter into the contract, and which being otherwise than as they were stated, would leave the situation after the contract different from what it would have been if the representations had not been made; then the person making those representations shall, so far as the powers of a Court of Equity extend, be treated as if the representations were true, and shall be compelled to make them good. But those must be representations concerning existing facts."

Statements or recitals contained in a deed will, in general, be taken as statements upon which some or all of the parties are intended to act, and are consequently statements which parties to the deed are estopped from denying. Thus, a recital that the vendor is seised in fee is a statement upon which the purchaser is intended to act, and in an action brought upon the deed by the purchaser or a person claiming under

(*t*) *Duchess of Kingston's Case*, 20 State Trials, 855; 1 Leach, C. C. 146; 2 Sm. L. C. 713.

(*u*) L. R. 6 H. L. 353, at p. 360; 43 L. J. Ch. 269; 22 W. R. 194.

him, the vendor will not be allowed to dispute the accuracy of such recital.

A married woman will not be estopped by a representation in respect of property subject to a restraint on anticipation (*v*), nor can infants be estopped from pleading their infancy (*x*), nor will a corporation be estopped by its deed from setting up the defence of *ultra vires*.

As between landlord and tenant when a lease has been granted, both the landlord and the tenant are, during the term, estopped from denying that the landlord had any interest out of which the lease could take effect (*y*).

Requisition.

As the second mortgage by the vendor to B. was made by deed and contained a recital that the vendor was seised in fee, but no reference to the first mortgage, it would seem that when the vendor obtained the reconveyance of the legal estate from the first mortgagee the second mortgage took effect as a legal mortgage by way of estoppel (z). A proper reconveyance from the second mortgagee must, therefore, be obtained, or he must concur in the conveyance to the purchaser. Under the circumstances, a mere receipt for the mortgage money is not sufficient.

EXCHANGE.

See INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

EXECUTION.

See APPOINTMENTS—DEEDS—WILLS.

(*v*) *Bateman (Lady) v. Faber*, (1898) 1 Ch. 144; 67 L. J. Ch. 130; 77 L. T. 576; 46 W. R. 215.

(*x*) *Bartlett v. Wells*, 31 L. J. Q. B. 57; 5 L. T. 607; 10 W. R. 229; 8 Jur. (N. S.) 762; 1 B. & S. 836.

(*y*) Co. Litt. 47 b.

(*z*) *General Finance, Mortgage and Discount Co. v. Liberator Permanent Benefit Building Society*, 10 Ch. D. 15; 39 L. T. 600; 27 W. R. 210.

EXECUTORS, SALES AND MORTGAGES BY.

Questions frequently arise as to the ability of executors to make a title to real estate in cases (i) where such estate has been devised to them, but without an express power to sell or mortgage; and (ii) where the estate has not been devised to them at all.

In the following cases executors have power to sell or mortgage the testator's real property:—

(i.) *Where there is a devise to the executors but no express power to sell or mortgage.*

(1.) Where the devise is subject to a charge of debts, the executors have an implied power to sell or mortgage (a).

(2.) Where the executors are devisees in trust under a will coming into operation on or after the 13th Aug. 1859, they have a statutory power to raise any money charged thereon by sale or mortgage (b).

(ii.) *Where there is no devise to the executors.*

(3.) A common law power arises where a testator by his will, expressly or by implication, authorizes his executors to sell freehold land, but does not devise the land to them (c).

(4.) On a testator's death after the 13th August, 1859, a statutory power of sale arises where such testator has expressly or impliedly charged his real estate, or any specific portion of it, with the payment of debts or any legacy or other sum of money and has not devised the hereditaments charged in such terms as that his whole estate and interest therein becomes vested in any trustee or trustees or in any person in fee or in tail beneficially. In such case, notwithstanding any trusts declared by the testator, the executor can raise such debts, legacy, or money by sale or mortgage (d).

(a) *Corser v. Cartwright*, L. R. 7 H. L. 731; 45 L. J. Ch. 605.

(b) 22 & 23 Vict. c. 35, s. 14.

(c) Co. Litt. 113 a, 236 a.

(d) Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 16.

- (5.) Where estate duty is payable in respect of real property passing on a death, and the persons accountable request the executor to pay it, he has power to sell or mortgage such property (e).

A charge of legacies on all the real estate does not *prima facie* charge lands specifically devised (f); but if the charge is for debts and legacies, then not only the debts but also the legacies are charged, even on lands specifically devised (g).

An implied charge arises—

- (1.) Where there is a general direction by a testator that his debts shall be paid (h), but a direction to the executors to pay debts charges only the real estate, if any, devised to them (i).
- (2.) A direction for sale of real estate, and that the proceeds shall form part of the residuary personal estate of the testator, subjects the real estate to all charges affecting the personal estate (k).
- (3.) Where legacies are bequeathed and the residue of the real and personal estate are afterwards comprised in one mass, the legacies are charged on the residuary real estate (l).

A purchaser from an executor is not bound or entitled to inquire whether debts remain unpaid, unless twenty years have elapsed from the date of the testator's decease (m). After twenty years have elapsed since the testator's decease, a presumption arises that the debts have been paid, and the purchaser is therefore put upon inquiry. This rule does not, however, in general apply to the case of an executor selling leaseholds of his testator (n).

(e) 57 & 58 Vict. c. 30, ss. 6, 9, 22.

(f) *Conron v. Conron*, 7 H. L. C. 168.

(g) *Re Emmerton, Maskell v. Farrington*, 7 L. T. 301; 11 W. R. 127; 8 Jur. (N. S.) 1198; 1 N. R. 37.

(h) *Shallcross v. Finden*, 3 Ves. jun. 738; 3 R. R. 75.

(i) *Henvell v. Whitaker*, 8 Russ. 843; *Keeling v. Brown*, 5 Ves. jun. 359; 5 R. R. 70.

(k) *Kidney v. Coussmaker, Williams v. Coussmaker*, 2 Ves. jun. 267; 2 R. R. 118; 7 Bro. P. C. 573.

(l) *Greville v. Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.

(m) *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465; 51 L. J. Ch. 434; 46 L. T. 542; 30 W. R. 801.

(n) *Re Whistler*, 35 Ch. D. 561; 56 L. J. Ch. 827; 57 L. T. 79; 35 W. R. 662.

An executor may sell or mortgage or otherwise deal with leaseholds even though specifically bequeathed, and one only of several executors can make a title thereto and give a good receipt to a purchaser. And where the death took place on or after 2nd August, 1894, an executor may sell or mortgage leaseholds over which the deceased had at his death a general power of appointment, whether *inter vivos* or by will (*o*). In the case of persons dying after the 31st December, 1897, where real estate is vested in any person without a right in any other person to take by survivorship, or where such person executes by will a general power of appointment, on his death, notwithstanding any testamentary disposition, such real estate devolves to and becomes vested in his personal representative like a chattel real (*p*); and he may consequently sell, mortgage, or otherwise deal with it; this does not, however, apply to copyholds or customary freeholds (*q*), and all the legal personal representatives must join in any sale, unless it is by the direction of the Court (*r*). It is conceived that in the case of persons dying after the 31st December, 1897, the rule will be the same as regards realty as it is in the case of personalty, and accordingly that a purchaser will not be entitled to inquire whether debts remain unpaid even after the lapse of twenty years.

Where at the death of a person dying after the 31st December, 1881, there is a subsisting contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs general in any land, his executors can convey the land for all the estate and interest vested in him at his death in any manner proper for giving effect to the contract (*s*).

See LEASEHOLD PROPERTY—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE—WILLS.

(*o*) Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 6, 9.

(*p*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (1), (2).

(*q*) *Ibid.* s. 1 (4).

(*r*) *Ibid.* s. 2 (2).

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 4.

Requisitions.

1. *Having regard to the fact that their testator died more than twenty years ago, the vendors must either furnish the purchaser with proof that some of his debts still remain unpaid, or all the persons beneficially entitled must join in the conveyance.*

2. *The leasehold property referred to in the particulars was specifically bequeathed to the testator's daughter X. It is presumed that the vendors have not assented to this bequest.*

EXECUTORY INTERESTS.

Executory interests, that is to say, future estates other than estates in remainder in real estate, may be created either *inter vivos* or by will. They can only be created *inter vivos* under the Statute of Uses (*t*) by means of a springing or shifting use, and as the Statute of Uses does not apply to terms of years, an executory interest in leaseholds cannot be limited *inter vivos*. By will, however, an executory interest may be created without the aid of the Statute of Uses by merely stating the event upon which the estate given is to arise or shift, and even a chattel interest can by this means be given by will to one person for life and after his decease to another (*u*).

A remainder limited by means of a shifting or springing use is subject to the common law rules affecting remainders, and is not considered to be an executory interest (*x*).

Executory interests are subject to the rule against perpetuities.

See PERPETUITIES—USES.

Requisition.

The limitation by the indenture of settlement of 18 , of the leasehold portion of the property to the use of the vendors after the marriage of A. was void. It will therefore be necessary to obtain the concurrence of A.

(*t*) 27 Hen. 8, c. 10.

(*x*) *Chudleigh's Case*, 1 Rep. 120 a.

(*u*) *Fearne*, 401—404.

EXPECTANT HEIRS.

Courts of Equity always readily set aside the sale of expectancies by heirs and others on the ground that an inadequate price had been given; and notwithstanding that by a statute passed in 1867 (*y*) it was enacted that no purchase of any reversionary interest in real or personal estate, made *bonâ fide* and without fraud or unfair dealing, should, after the 31st December, 1867, be set aside merely on the ground of undervalue, such sales will still, if the undervalue is sufficiently gross, be set aside by the Court, on the principle that such undervalue is evidence of unfair dealing (*z*).

Requisition.

The amount paid by the vendor for the reversionary interest to be sold was less than one-fourth of its actuarial value. Having regard to the extreme inadequacy of the consideration, what evidence does the vendor offer that under the circumstances of the case the transaction was reasonable and bonâ fide? Unless the purchaser is satisfied as to this, the concurrence of the original owner must be obtained.

FEE SIMPLE.

In conveyances and mortgages of estates in fee simple executed before the 1st January, 1882, it was necessary to use the words "and his heirs," or "and their heirs." No other words, though they might have had the same meaning, would suffice. Thus, a limitation to A. and his "heir," or to A. "or" his heirs, or to A. "in fee simple," would not give to A. any greater estate than an estate for his life. But since the 31st December, 1881, the words "in fee simple" may be employed to convey an estate to a person in fee

(*y*) The Sales of Reversions Act, 1867 (31 & 32 Vict. c. 4).

(*z*) *Tyler v. Yates*, L. R. 6 Ch. 665; 40 L. J. Ch. 768; 25 L. T. 284; 19 W. R. 909.

simple (a); no words other than "and his heirs" or "in fee simple" are even now sufficient to pass the fee.

In the case of a corporation aggregate, no words of limitation are or ever were necessary; it is, however, usual to add some such words; the proper words in such a case are "and their assigns," but the words "and their successors" are often used. When it is intended to limit an estate to a corporation sole, other than the Crown, the words "and his successors" are necessary, as the provisions of the Conveyancing Act, s. 51, do not apply; but the Crown can take a fee simple without words of limitation.

If an estate of freehold is limited to A., and afterwards, either mediately or immediately by the same instrument, an estate is limited to his heirs, or the heirs of his body, then, subject to any intervening estates, there is vested in A. an estate in fee simple or in tail in the same way as if the ultimate estate had been limited to A. and his heirs or the heirs of his body (b); and if there be no estate intervening between A.'s estate of freehold and his ultimate estate of inheritance, his estate of freehold merges in the ultimate remainder, and he at once takes an estate of inheritance; thus, a gift to A. during the life of B., with remainder to the heirs of A., gives A. an immediate estate in fee simple. This rule, which is known as the rule in *Shelley's Case*, does not apply unless the estates limited to A. and to his heirs are both legal or both equitable.

In the case of copyhold lands by special custom, estates of inheritance may be limited in surrenders without the use of the word "heirs."

Prior to the passing of the Wills Act (c) in 1837, a devise of real estate to A. passed a life interest only, unless a contrary intention appeared in the will; very small indications were held to be sufficient to show such intention. The law on the point is now of small importance, as the statute referred to (d), which applies to wills made or republished on or after

(a) Conveyancing Act, 1881 (44 & L. C. 332.
45 Vict. c. 41), s. 51.

(b) *Shelley's Case*, 1 Rep. 93 b; Tu.

(c) 7 Will. 4 & 1 Vict. c. 26.

(d) *Ibid.* s. 8.

the 1st January, 1838, provides that where real property is devised without words of limitation, such devise passes the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appears.

Requisitions.

1. *The rentcharge contracted to be sold was limited "to the use that A. may for ever hereafter receive, &c." As there are no words of limitation, it would seem that A. only takes an estate for life in the rentcharge. How does the vendor propose to get over this difficulty?*

2. *The copyhold property was surrendered to the vendor "and his sequels in right." A special custom of the manor must be shown to exist whereby these words will pass an estate of inheritance without the use of the word "heirs."*

FELONS.

See CONVICTS, TRAITORS AND FELONS.

FEOFFMENTS.

This method of conveying freehold lands of which the conveying party is seised, has now fallen into disuse. It consists of a delivery of the possession of the land, technically called "livery of seisin." Writing was rendered necessary by the Statute of Frauds; in order to pass an estate of freehold, such writing must be signed by the feoffor or his agent thereunto lawfully authorized by writing (e). A feoffment made after the 31st September, 1844, other than a feoffment made under a custom by an infant, must be evidenced by deed (f).

(e) 29 Car. 2, c. 3, s. 1.

(f) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3.

All land which is subject to the custom of gavelkind can be conveyed by feoffment by a tenant seised of it as soon as he has attained the age of fifteen, but an infant cannot appoint an attorney to deliver seisin. A deed is not required for a feoffment made under a custom by an infant, but writing is necessary to satisfy the Statute of Frauds.

The tortious operation of feoffments was abolished as from the 1st January, 1845 (*g*), and this subject is now of no practical importance.

See GAVELKIND.

Requisition.

Evidence must be produced that the purchase-money was actually paid to the feoffor. His receipt is not sufficient, as he was at the time an infant.

FIDUCIARY RELATIONSHIP.

In certain cases where this relationship exists sales and purchases are liable to be set aside in equity on the ground that the vendor or purchaser, as the case may be, has not the necessary authority to sell or buy; and a sub-purchaser who has notice of the circumstances is in no better position than the original purchaser. The same principles apply to mortgages and leases, mortgagees and lessees being purchasers *pro tanto*.

The following transactions are voidable on this ground—

- (1) A sale to himself or to a trustee for himself by a trustee for sale (*h*).
- (2) A purchase from himself or from a trustee for himself by a trustee with power to purchase (*i*).

(*g*) 7 & 8 Vict. c. 76, s. 7; 8 & 9 Vict. c. 106, s. 4. Bro. P. C. 258; 2 Cox, 158, 320.

(*h*) *Fox v. Mackreth*, 2 R. R. 55; 2 W. & T. 709; 2 B. C. C. 400; 4 (*i*) *Ex parte Lacey*, 6 Ves. jun. 625; 6 R. R. 9.

- (3) A sale by a trustee in bankruptcy to himself or to a trustee for himself (*k*).
- (4) A sale by an executor or administrator to himself or to a trustee for himself, or to one of his co-executors or co-administrators (*l*).
- (5) A sale to himself by an agent or auctioneer employed to sell (*m*).
- (6) A purchase from himself by an agent employed to buy (*n*).
- (7) A sale to himself or to a trustee for himself by a mortgagee under his power of sale (*o*).
- (8) A sale to a director by his company (*p*), and by a director to his company (*q*); also the like transactions between a governor of a charity and the charity (*r*).

In addition to these cases, there are cases of another class where the Court looks with great suspicion on transactions *inter vivos* on account of the fiduciary relation existing between the parties. These relations include—

Solicitor and client;
 Doctor and patient;
 Minister and member of congregation;
 Trustee and beneficiary;
 Parent and child;
 Guardian and ward;
 Agent and principal.

Transactions between parties in these relationships are liable to be impeached at the instance of the last-mentioned party in each case, unless the first-mentioned party can show that no improper influence was exercised; in cases of this class a sub-purchaser is safe if he has no notice of any cir-

(*k*) *Ex parte Lacey*, 6 Ves. jun. 625, note at p. 630; 6 R. R. 9.

(*l*) *Killick v. Flexney*, 4 B. C. C. 161.

(*m*) *Oliver v. Court*, 22 R. R. 720; Daniell, 301; 8 Price, 127.

(*n*) *East India Co. v. Henchman*, 1 Ves. jun. 287.

(*o*) *Martinson v. Clowes*, 21 Ch. D. 857; 51 L. J. Ch. 594; 46 L. T. 882; 30 W. R. 795.

(*p*) *Aberdeen Rail. Co. v. Blackie Brothers*, 2 Eq. Rep. 1281; 1 Macq. 461; 23 L. T. 315.

(*q*) *Imperial Mercantile Credit Association (The Liquidators of) v. Coleman*, L. R. 6 H. L. 189; 42 L. J. Ch. 644; 29 L. T. 1; 21 W. R. 696.

(*r*) *Att.-Gen. v. Clarendon (Earl of)*, 17 Ves. jun. 491.

cumstance rendering the transaction voidable in equity. No requisition should, therefore, in general be made in such cases, unless the proposed purchaser or mortgagee has any such notice.

Requisition.

It appears that [here state relationship]. The concurrence of [the person on whose application the transaction is voidable] must be procured.

FINES AND RECOVERIES.

Fines and recoveries were abolished in 1833 (s); but as titles still occasionally commence before the date of their abolition some account of them may be useful.

A common recovery was a contrivance for evading the Statute *De Donis* by means of a fictitious suit collusively prosecuted to judgment, by means of which a tenant in tail, provided that he was either seised of the land or obtained the concurrence of the person so seised, was enabled to bar his issue and all subsequent estates in remainder (t); and a statute of Geo. II. enacted that a recovery suffered without the concurrence of a lessee for life at a rent should be valid, provided the concurrence of the person next entitled to a freehold estate in remainder or reversion could be procured (u).

A fine was also a fictitious suit, but was terminated by agreement, under which the person suing was admitted to be the owner of the land. It was only binding against a tenant in tail and his issue, unless the tenant in tail was actually seised, when it was also binding on the remaindermen by tortious operation. In order to complete a fine, enrolment on the records of the Court and proclamations were required. All fines levied in the Court of Common Pleas are deemed to have been barred with proclamations (x).

(s) 3 & 4 Will. 4, c. 74.

(t) *Taltarum's Case*, Year Book, 12 Edw. 4, 19.

(u) 14 Geo. 2, c. 20, ss. 1, 2.

(x) 11 & 12 Vict. c. 70, s. 1.

If an estate tail was barred by fine only, the estate created was a mere base fee, and the land was liable, after the death of the tenant in tail and failure of his issue, to be recovered by the remainderman.

Prior to their being abolished, fines were much made use of for barring dower, and for that purpose they were effectual without proclamations; but separate examination of married women was necessary. A fine was also used on the conveyance of real property to which a man was entitled in right of his wife.

In practice, the production of the recovery deed may now be accepted as sufficient evidence of a recovery. As regards a fine, the chirograph should be abstracted and produced, and, where proclamations were necessary, a memorandum duly indorsed thereon is sufficient proof. When the interest of a married woman is being dealt with, the abstract must also contain the certificate of her acknowledgment, as without such acknowledgment the fine would be ineffectual.

Requisitions.

1. *A. B., the tenant in tail in possession, who purported to convey by the indentures of lease and release of , 1811, covenanted to levy a fine in order to bar his estate tail. The abstract should show that such fine was duly levied, for which purpose the chirograph must be abstracted and produced.*

2. *The fine levied by C. D., the tenant in tail in remainder, who conveyed by the indenture of , 1830, would only have the effect of barring the issue of the tenant in tail and not the remaindermen, and it would appear to have had no tortious operation. The remaindermen will, however, no doubt be statute-barred. Evidence on the point should nevertheless be produced, as, by reason of deaths under age of successive tenants in tail, it is possible that there might still be an enforceable claim.*

FIRE.

See INSURANCE AGAINST FIRE.

FIXTURES.

All chattels fixed to the soil are regarded as a portion of the freehold, and as such they pass to the purchaser upon a conveyance, or to the devisee upon a devise of the land. Upon the death intestate of the owner of the land his heir-at-law is entitled to the fixtures.

In former times fixtures were irremovable by a lessee or other limited owner, but exceptions were, many years ago, made with regard to certain fixtures which such limited owners have attached to the freehold, and which are known as “tenants’ fixtures.” These comprise “trade fixtures,” that is to say, articles attached to the freehold merely for the purposes of trade, and “ornamental fixtures,” which are articles so attached for the purpose of ornament or domestic use. Such fixtures may be removed by a tenant or other limited owner attaching them, provided he can do so without damage to the freehold, and such removal must take place before his term or interest has expired.

Fixtures put up for the purpose of agriculture were held not to come within the category of trade fixtures, but by various statutes the law has been modified in favour of agricultural tenants. After the 23rd July, 1851, if a tenant, with the consent in writing of the landlord for the time being, erects at his own expense for agricultural purposes, or for the purposes of trade and agriculture, any building, engines, or machinery, subject to the right of the landlord to purchase such fixtures, they become the tenant’s property, and are removable by him on giving the landlord or his agent one calendar month’s previous notice in writing of his intention to remove them (*y*).

(*y*) 14 & 15 Vict. c. 25, s. 3.

A further modification of the law as regards agricultural fixtures was made by the Agricultural Holdings (England) Act, 1875 (z), which came into operation on the 14th February, 1876. This provision was repealed and re-enacted with slight alterations by the Agricultural Holdings (England) Act, 1883 (a). Under these statutes an agricultural tenant may remove fixtures voluntarily attached by him to his holding after he has paid all rent owing by him, and satisfied all his other obligations in respect of his holding. He is bound to give a calendar month's notice to his landlord, and his right of removing the fixtures is subject to the landlord's right to purchase them. The Act of 1875 applied only to holdings of two acres at least, but there is no similar provision in the Act of 1883 which applies to any parcel of land held by a tenant which is wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden; but the Act does not apply to any holding let to the tenant during the continuance in any office, appointment, or employment held under the landlord (b).

There appears to be nothing to prevent a landlord and tenant from modifying by agreement the provisions of the Act with regard to fixtures.

Requisitions.

1. *It is presumed that the purchaser is entitled to all the fixtures that are now on the premises.*

2. *Which (if any) of the ornamental fixtures upon the premises are the property of the present tenant?*

3. *Do all the trade fixtures now upon the premises belong to the present tenant, or were any, and which, on the premises at the time of the demise?*

(z) 38 & 39 Vict. c. 92, s. 53.

(a) 46 & 47 Vict. c. 61, s. 34.

(b) *Ibid.* s. 54.

FORECLOSURE.

A foreclosure is proved by the production of the final foreclosure order. It operates to convey to the mortgagee the full beneficial interest which was subject to the mortgage. An order of the Court will not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of such want or not (c).

In the case of an equitable mortgage, the foreclosure order usually directs the mortgagor to convey the premises as the mortgagee shall direct (d). The purchaser of foreclosed property should see that the order has been complied with in this respect, or that a vesting order has been made (e).

Requisition.

The mortgage to the mortgagee was only an equitable one, and, though it has been foreclosed, it does not appear that the legal estate has been got in. The mortgagor must be a party to the conveyance to convey the legal estate, or a vesting order must be obtained at the vendor's expense.

FORFEITURE.

See CONVICTS, TRAITORS AND FELONS—LEASEHOLD PROPERTY.

FREEBENCH.

See DOWER AND FREEBENCH.

(c) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70.

(d) Seton, 1695.

(e) *Lochmere v. Clamp*, 30 L. J.

Ch. 651; 32 L. J. Ch. 276; 7 L. T. 411; 9 W. R. 860; 11 W. R. 83; 1 N. R. 81; 30 Beav. 218; 31 Beav. 578.

FRIENDLY SOCIETIES.

The law relating to friendly societies has recently been consolidated by the Friendly Societies Act, 1896 (*f*), which, together with the Collecting Societies and Industrial Assurance Companies Act, 1896 (*g*), repeals and re-enacts the five Acts collectively called the Friendly Societies Acts, 1875 to 1895 (*h*).

All property belonging to a friendly society is vested in the trustees of the society for the time being. Upon the death, resignation, or removal of a trustee, the property, whether real or personal, vests in the surviving or continuing trustees without any conveyance or assignment, and upon the death of the last-surviving trustee, the property of the society vests in his legal personal representative (*i*). On the appointment, therefore, of new trustees, no transfer of the trust property is, in general, necessary (*k*). Stocks and securities in the public funds of Great Britain and Ireland must, however, be transferred into the names of the succeeding trustees in the usual manner (*i*).

A friendly society may (if its rules so provide) hold, purchase, or take on lease any land, and may sell, exchange, mortgage, lease, or build upon that land, and may alter and pull down buildings and again rebuild; and a purchaser, assignee, mortgagee, or tenant is not bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees for any money arising from or in connection with such a sale, exchange, mortgage, or lease is a good discharge: a benevolent society, however, cannot hold land exceeding one acre in extent at any one time (*l*).

(*f*) 59 & 60 Vict. c. 25.

(*g*) 59 & 60 Vict. c. 26.

(*h*) 38 & 39 Vict. c. 60; 50 & 51 Vict. c. 56; 52 & 53 Vict. c. 22; 56 & 57 Vict. c. 30; 58 & 59 Vict. c. 26.

(*i*) 38 & 39 Vict. c. 60, s. 16 (4); 59 & 60 Vict. c. 25, s. 50.

(*k*) *Morrison v. Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84.

(*l*) 38 & 39 Vict. c. 60, s. 16 (2); 59 & 60 Vict. c. 25, s. 47.

On a purchase of copyhold property, the lord of the manor is bound to admit not more than three trustees of the society on payment of the usual fines, fees, and other dues payable on the admission of a single tenant (*l*).

A receipt under the hands of the trustees of a friendly society or branch, countersigned by the secretary, for all sums of money secured to the society or branch by any mortgage or assurance, if indorsed upon or annexed to the mortgage, vacates the mortgage or other assurance and vests the property comprised in it in the person entitled to the equity of redemption without reconveyance or surrender (*m*). If the mortgage has been registered under any Act for the registration of title, or is of copyholds, or of lands of customary tenure and entered on any court rolls, the registrar under any such Act or steward of the manor is bound, on the production of the receipt verified by oath of any person, to enter satisfaction of the mortgage on the register or court rolls and to grant a certificate either upon the mortgage or separately to the like effect (*n*), which certificate is evidence, without further proof, in all Courts and proceedings (*o*).

The proper evidence that a society is duly registered under one of the Acts is the acknowledgment of registry issued by the Chief Registrar of Friendly Societies (*p*): a copy of the rules should be required to prove their contents.

Requisitions.

1. *A copy of the rules of the X. Friendly Society must be furnished, as also must the acknowledgment of registry under the Friendly Societies Acts. It must also be proved that A., B., C. and D. were trustees of the society at the time of the mortgage, and that A., B. and C. were*

(*l*) 38 & 39 Vict. c. 60, s. 16 (6);
59 & 60 Vict. c. 25, s. 48.

(*m*) 38 & 39 Vict. c. 60, s. 16 (7);
59 & 60 Vict. c. 25, s. 53 (1).

(*n*) 38 & 39 Vict. c. 60, s. 16 (8);
59 & 60 Vict. c. 25, s. 53 (2).

(*o*) *Ibid.* s. 53 (3).

(*p*) 38 & 39 Vict. c. 60, s. 11 (10);
59 & 60 Vict. c. 25, s. 11.

*the trustees at the time the indorsed receipt was given.
When did D. cease to be a trustee of the society?*

2. *The land sold is stated to contain one acre or thereabouts: it must be shown that it does not exceed one acre (q).*

FUTURE ESTATES.

See REVERSIONARY INTERESTS.

GARDENS, COTTAGE AND MARKET.

See AGRICULTURAL HOLDINGS.

GAVELKIND.

Tenure subject to the custom of gavelkind is principally met with in the county of Kent. In that county every interest in land is presumed to be held according to this tenure, and to displace this presumption it is necessary to show that the land was never so subject, or that it has been disgavelled by an Act of Parliament.

The most important peculiarities of gavelkind are—

- (1) An infant who has attained the age of fifteen can convey by feoffment for value, and such conveyance is not liable to be avoided by the infant on his attaining the age of twenty-one (r).
- (2) Birth of issue is not necessary to entitle a husband to an estate by curtesy in his wife's lands. The husband's estate by curtesy extends only to one moiety of his wife's lands, and ceases upon his marrying again.
- (3) The wife's dower (commonly called freebench) extends to one moiety of her husband's lands, and lasts only

(q) See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 47 (3).

(r) *Re Maskell and Goldfinch's Con-*

tract, (1895) 2 Ch. 525; 64 L. J. Ch. 678; 72 L. T. 836; 43 W. R. 620; 13 R. 685.

during her widowhood, and while chaste, or, rather, having had no illegitimate child.

- (4) All males inherit together as coparceners subject to the husband's curtesy or wife's dower. In other respects the descent of the estate is regulated by the same rules as apply to ordinary estates in fee simple. The issue of deceased males where their ancestor is dead take their ancestor's share as coparceners.

The Dower Act applies to dower under the custom of gavelkind (*s*). Under it a widow is entitled to dower where the interest of the husband was equitable as well as where it was legal (*t*), but not out of any lands absolutely disposed of by the husband in his lifetime (*u*), and her dower may be barred by declaration in deed or will (*x*), or by a devise showing a contrary intention (*y*).

See FEOFFMENTS.

Requisition.

As the land sold is in the county of Kent, it is presumed that it is subject to the custom of gavelkind. On the death of A. B. intestate and without leaving a widow, C. D., his eldest son, would be entitled to one-third only. E. F., the only daughter of A. B.'s second son, would be entitled to one other third, and G. H. and K. L., the two sons of A. B.'s third son, would be entitled to the remaining third of the property. E. F., G. H., and K. L. must join with C. D. in the conveyance to the purchaser. As K. L. is only eighteen years of age, he must convey his share by feoffment, and at least one-sixth of the purchase-money must be paid to him personally.

(*s*) *Farley v. Bonham*, 30 L. J. Ch. 239; 3 L. T. 806; 9 W. R. 299; 7 Jur. (N. S.) 232; 2 J. & H. 177.
(*t*) The Dower Act, 1833 (3 & 4

Will. 4, c. 105), ss. 2, 3.

(*u*) *Ibid.* s. 4.

(*x*) *Ibid.* ss. 6, 7.

(*y*) *Ibid.* s. 9.

GRANT.

A deed of grant was at common law the appropriate mode of conveying incorporeal hereditaments; but corporeal hereditaments, that is, freehold estates in possession, could not be so conveyed. Since the 1st October, 1845, all corporeal tenements and hereditaments have been deemed to lie in grant as well as livery (s), and consequently have been capable of being transferred by deed of grant.

The word grant implies covenants for title in a conveyance by companies under the Lands Clauses Consolidation Act, 1845 (a), and in conveyances to the Governors of Queen Anne's Bounty (b).

See CONVEYANCES.

GRANT, WORDS OF.

See DEEDS.

GROUND RENTS.

What is commonly referred to as a ground rent is merely a freehold or leasehold interest subject to a lease or underlease on the grant of which the ground rent has been reserved. The lease or underlease should in all cases be abstracted, and the counterpart handed over to the purchaser on completion.

Requisitions.

1. *Who is at present entitled to the leasehold interest on the property on which the ground rent is secured?*
2. *The counterpart of the lease will, it is presumed, be handed over to the purchaser on completion.*

(s) The Real Property Act, 1845
(8 & 9 Vict. c. 106), s. 2.

(b) Queen Anne's Bounty Act,
1838 (1 & 2 Vict. c. 20), s. 22.

(a) 8 & 9 Vict. c. 18, s. 132.

3. *What right had the trustees of the settlement of 18 , to purchase these ground rents? The power of sale of the property originally settled provides for the purchase out of the proceeds of "other hereditaments in possession." Is it contended that these words include freehold ground rents?*

HABENDUM.

See DEEDS.

HEIRS.

See ENTAIL—FEE SIMPLE.

HUSBAND.

See CURTESY—MARRIED WOMEN.

HUSBAND AND WIFE.

See CONVEYANCES—MARRIED WOMEN.

IDENTITY.

It is not usual to insist upon proof of the identity of persons named in certificates of birth, marriage, or death, but it is conceived that strictly the purchaser is in all cases entitled at his own expense to a statutory declaration by a person well acquainted with the family, identifying such persons. The same observation applies to the identity of persons named in instruments such as deeds and wills, but as in these cases an address and description is usually added,

the purchaser need rarely require any further evidence beyond the instruments themselves.

A purchaser would do well to insist upon all discrepancies which throw any doubt upon the identity of the parcels described in the various documents of title with the property sold being satisfactorily accounted for, and he ought in all cases to be furnished with tracings of any plans which are referred to in any of the documents of title. A study and comparison of these will frequently satisfy any doubts which the mere description of the property has raised. All facts or circumstances which are necessary to establish the identity of the parcels should be proved by the statutory declaration of some person well acquainted with the neighbourhood. ||

Requisitions.

1. *Is the James Smith mentioned in the underlease of 189 , and in the assignment of 189 , the same person as Charles James Smith, the testator? Evidence of identity explaining the discrepancy must be furnished.*

2. *On page of the abstract the name of the second child of Mr. and Mrs. M. is stated as Elizabeth Gracc, whereas the name of Mrs. F., through whom the title is derived, is given as Grace Elizabeth. This discrepancy must be explained and evidence of identity given.*

3. *The death certificates of John William X., the uncle, and of John William X., the nephew, must both be produced, and, having regard to the fact that both uncle and nephew bear the same name, there should be a statutory declaration by some person well acquainted with the family identifying the persons named in the certificates with the uncle and nephew respectively.*

4. *Copies of the plans referred to in the abstract of title should be supplied in order to enable the purchaser to satisfy himself as to the identity of the premises comprised therein with the property contracted to be sold.*

5. *Some evidence must be furnished to prove that the*

property contracted to be sold forms part of the estate comprised in the mortgage of , 189 .

6. The parcels in the indenture of lease of , by reference to which the property contracted to be sold is afterwards conveyed, is described as a piece of building ground [&c.]. Evidence must be produced identifying this with the ground on which the house described in the particulars of sale has been built.

7. Evidence must be supplied to show that the property described in the abstract is identical with or includes that contracted to be sold as described in the particulars of sale. For this purpose tracings from the tithe commutation map of the parish, or similar evidence, supported by a statutory declaration of some person acquainted with the property, must be produced.

8. According to the abstracted documents, the property the title to which is adduced is No. 9, Victoria Terrace, with a small piece of ground which was comprised in the lease of No. 8, Victoria Terrace, but the property as referred to in the particulars appears to be known as No. 120, Acre Lane. What evidence of identity does the vendor offer?

9. Is the Summer Lane, referred to in the indentures of lease and release of 1832, the same road as Jubilee Row mentioned in the will of 1888? If so, a statutory declaration by some person well acquainted with the neighbourhood, to the effect that Jubilee Row was formerly known as Summer Lane, should be furnished to the purchaser.

10. How did No. 7a, X. Street become No. 19, X. Street? A certified copy of the order of the London County Council altering this must be produced.

IDIOTS.

See INSANITY.

IMPLIED COVENANTS.

See COVENANTS.

IMPROVEMENTS.

See LAND IMPROVEMENT ACTS.

INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

As the title to land awarded on an inclosure under the Inclosure Act, 1845, depends upon the title to the land in respect of which the award is made (c), an abstract of the latter title must be furnished to a purchaser.

The Inclosure Act contains provisions whereby an exchange may be effected. This exchange is effectual for all purposes, and is not liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same has been made, and the land taken upon such exchange is held upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances as the lands given on such exchange would have stood limited to or been subject to in case such exchange had not been made (d).

A sealed copy of the award which is delivered to each of the parties on whose application an exchange was made ought to be handed over to a purchaser.

Since the 4th September, 1848, inclusive, a partition may be obtained under the provisions of the Inclosure Acts on the application of persons interested. Such partitions are effectual for all purposes, and like exchanges are not liable to be impeached by reason of any infirmity of estate or defect of

(c) The Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 94.

(d) *Ibid.* s. 147.

title of the persons on whose application they have been made. The land allotted in severalty upon every such partition enures to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the undivided part or share in respect of which the same is allotted would have stood limited or been subject to in case the partition order had not been made (e).

A partition order under the Inclosure Acts is proved by a sealed copy of the award which is delivered to each of the parties on whose application the partition was made (f). Inclosure awards are proved either by a copy signed by a proper officer of the Court if the enrolment has been made in the High Court, or by a copy signed by the clerk of the peace of the county if it has been made with the clerk of the peace (g).

Requisitions.

1. *An abstract of the title to the land by virtue of his estate in which the property sold was allotted to the vendor under the inclosure award of 18 , must be furnished.*

2. *The vendor must at his own expense adduce evidence proving that the award offered as the root of title was made on the application of the persons interested in the land within the meaning of the Inclosure Act, 1848, s. 13 (h).*

3. *As the exchange of 18 , was effected under sect. 147 of the Inclosure Act, 1845, the title of the land given in exchange must be deduced. The title prior to the exchange of the land taken is immaterial.*

4. *The purchaser will require to be satisfied as to the regularity of the award. What evidence can the vendor produce to show that the formalities required by the Inclosure Acts have been carried out?*

(e) 8 & 9 Vict. c. 118, s. 147;
11 & 12 Vict. c. 99, ss. 13, 14.

(f) 8 & 9 Vict. c. 118, s. 147;
11 & 12 Vict. c. 99, s. 14.

(g) 41 Geo. 3, c. 109, s. 35; 3 & 4
Will. 4, c. 87, s. 2.

(h) See *Jacomb v. Turner*, (1892)
1 Q. B. 47.

INFANTS.

An infant cannot—

(i) Make a conveyance which is not voidable on attaining his majority, or on death, except—

(1) Under a custom, such as in the case of gavelkind lands by feoffment;

(2) Under a statutory power, such as the Infant Settlements Act (i), whereby a male infant of twenty and a female of seventeen can, with the sanction of the Court, make a binding settlement on marriage;

(3) Where lands have descended or been devised to an infant and it is necessary that they should be sold or mortgaged for payment of debts, the infant can convey under the direction of the Court for the purpose of making a title (k).

(ii) Exercise over real estate a power coupled with an interest in himself; as regards personal estate, however, he can do so even when coupled with an interest, where an intention appears that the power should be exercisable during minority (l). He can exercise a power not so coupled.

(iii) Make a will (m).

An infant of fifteen can, however, convey by feoffment with livery of seisin, *propria manu*, his gavelkind land, but he must have valuable consideration (n).

The freehold or leasehold property of an infant may be sold under the provisions of the Settled Estates Act, 1877 (o), and under the Settled Land Act, 1882 (p); and where the

(i) 18 & 19 Vict. c. 43.

(k) 11 Geo. 4 & 1 Will. 4, c. 47, s. 11; 11 Geo. 4 & 1 Will. 4, c. 65, ss. 12, 16, 31; 2 & 3 Vict. c. 60; 11 & 12 Vict. c. 87.

(l) *Re Cardross*, 7 Ch. D. 728; 47 L. J. Ch. 327; 38 L. T. 778; 26 W. R. 389; *Re D'Angibau, Andrews v. Andrews*, 15 Ch. D. 228; 49 L. J. Ch. 756; 43 L. T. 135; 28 W. R. 930.

(m) 7 Will. 4 & 1 Vict. c. 26, s. 7.

(n) Bacon's Abridgment, Vol. 4, 7th edit. p. 49; *Re Maskell and Goldfinch's Contract*, (1895) 2 Ch. 525; 64 L. J. Ch. 678; 72 L. T. 836; 43 W. R. 620; 13 R. 685.

(o) Settled Estates Act, 1877 (40 & 41 Vict. c. 18); Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 41.

(p) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59, 60.

infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under the Settled Land Act, 1882, the powers of a tenant for life are exercisable on his behalf by the trustees of the settlement, or, if none, by such person as the Court orders (*q*). Where a person seised or entitled in possession is an infant he is deemed tenant for life for the purposes of the Settled Land Acts (*r*).

See AGENTS—SETTLED LAND—VESTING DECLARATIONS AND ORDERS.

Requisitions.

1. *Upon what basis was the purchase-money apportioned on the feoffments referred to in the abstract? The land being gavelkind, the brothers were entitled as coparceners. Why does the infant brother receive less than a moiety of the purchase-money?*

2. *It would appear from the abstracted marriage settlement of his father and mother that the intended mortgagor is not yet of age. How is it proposed to make a title?*

INSANITY.

A conveyance by a person of unsound mind is void if voluntary or made to a person with notice of the unsoundness of mind; but conveyances by fine or recovery and feoffments, at all events before the 1st January, 1845 (*s*), were exceptions (*t*).

Although the law is by no means clear on the subject, the result of the authorities appears to be that a conveyance for valuable consideration to a purchaser without notice of the unsoundness of mind is not void, but is voidable at the option of the person of unsound mind or his representatives,

(*q*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 60.

(*r*) *Ibid.* s. 59.

(*s*) 7 & 8 Vict. c. 76, s. 7; 8 & 9 Vict. c. 106, s. 4.

(*t*) Burton, *ss.* 195, 196.

provided that the parties can be restored to their original position (*u*). It has been held that the Court will not interfere to set aside a contract made with a person who turns out to have been of unsound mind at the time if it is fair and reasonable and was made without notice of the unsoundness, especially where the parties cannot be reinstated (*x*). Indeed, it seems doubtful whether a contract entered into under such circumstances and completely executed will be set aside on any ground short of fraud, and in the Irish Courts it has been held that it will not (*y*). There seems no doubt that the Court would at least refuse under such circumstances to order specific performance of an agreement which was wholly executory.

Where a person has become insane it must, in order to make his will valid, be shown that at the time of making it he was of sound and disposing mind, memory, and understanding. Partial unsoundness not affecting the general faculties, and not operating on the mind of a testator in regard to testamentary disposition, is not sufficient to render a person incapable of disposing of his property by will (*z*).

The judge in Lunacy may order any property of the following persons to be sold, charged, mortgaged, dealt with, or disposed of for raising or securing money to be applied for all or any of the purposes mentioned hereunder. The persons referred to are:—

- (1.) Lunatics so found by inquisition.
- (2.) Lunatics not so found for the protection or administration of whose property any order had been made prior to the 1st May, 1890.
- (3.) Persons lawfully detained as lunatics though not so found by inquisition.
- (4.) Persons not being within (1) or (2) incapable through

(*u*) *Molton v. Camroux*, 4 Ex. 17; 478.

18 L. J. Ex. 68; 12 Jur. 800; *Elliott*

v. Ince, 7 De G. M. & G. 475; 26

L. J. Ch. 821; 30 L. T. (O. S.) 92;

5 W. R. 465; 3 Jur. (N. S.) 597.

(*x*) *Niell v. Morley*, 9 Ves. jun.

(*y*) *Hassard v. Smith*, 6 Ir. Eq. R. 429.

(*z*) *Banks v. Goodfellow*, L. R. 5 Q. B. 549; 39 L. J. Q. B. 237; 22 L. T. 813.

mental infirmity, arising from disease or age, of managing their affairs.

- (5.) Persons proved by the certificate of a master in Lunacy or by a report of the Commissioners to be of unsound mind or incapable of managing their affairs, and also as to whom it is so proved that their property does not exceed 2,000*l.* in value, or that the income does not exceed 100*l.* a year.
- (6.) A criminal lunatic continuing to be insane and in confinement (*z*).

The purposes for which the property can be so sold, mortgaged, or dealt with are for raising, or securing, or repaying, with or without interest, money which is to be, or which has been, applied to all or any of the purposes following :—

- (1.) Payment of such person's debts or engagements.
- (2.) Discharge of any incumbrance on his property.
- (3.) Payment of any debt or expenditure incurred for his maintenance, or otherwise for his benefit.
- (4.) Payment of, or provision for, the expense of his future maintenance (*a*).

The judge may in the case of a lunatic authorize the committee of the estate, and, in case of the above-mentioned persons not so found by inquisition, such persons as the judge may direct, amongst other things, to do the following acts respecting the lunatic's or other person's property :—

- (1.) Sell.
- (2.) Make exchange or partition, and give or receive money for equality.
- (3.) Grant leases, including building, agricultural, and mining leases, and accept a surrender of a lease.
- (4.) Surrender any lease and accept a new lease.
- (5.) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends.
- (6.) Perform any contract relating to his property entered into by the lunatic before his lunacy.

(*z*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 116.

(*a*) *Ibid.* s. 117.

- (7.) Surrender, assign, or otherwise dispose of onerous property.
- (8.) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit, or the power of consent is in the nature of a beneficial interest in the lunatic (*b*).

The committee of a lunatic may by leave of the judge take proceedings or give any necessary consent to have the lunatic made bankrupt (*c*).

The committee of a lunatic so found, or the person appointed by the Court in the case of a person of unsound mind not so found, is expressed to convey as such, and the covenants implied under the Conveyancing Act by his so conveying are the same as those implied in the case of a trustee (*d*).

The committee of a lunatic may act on his behalf for the purposes of the Settled Estates Act, 1877 (*e*), and the Settled Land Act, 1882, provides that where a tenant for life, or a person having the powers of a tenant for life under the Act, is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf under an order in lunacy, exercise the powers of a tenant for life under the Act; the order may be made on the petition of any person interested in the settled land or of the committee of the estate (*f*).

A person may be empowered to exercise on behalf of a person of unsound mind not so found powers given to the last-mentioned person by a settlement (*g*); but when a person of unsound mind not so found by inquisition is tenant for life, he must be found a lunatic by inquisition and a committee appointed before the powers of a tenant for life

(*b*) 53 & 54 Vict. c. 5, ss. 116 (2), 120.

(*c*) *Ex parte Cahen, Re Cahen*, 10 Ch. D. 183; 39 L. T. 645; 27 W. R. 387; see Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 148.

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (1), (F).

(*e*) 40 & 41 Vict. c. 18, s. 49.

(*f*) Settled Land Act, 1882, s. 62.

(*g*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, and 128; *Re X.*, (1894) 2 Ch. 415; 63 L. J. Ch. 613; 71 L. T. 139; 42 W. R. 657; 7 R. 365.

under the Settled Land Acts can be exercised in his behalf (*h*). If, however, the alleged lunatic is an infant, the Court retains its ordinary jurisdiction notwithstanding his mental disability (*i*); consequently the provisions of the Settled Land Act relating to infants (*k*) apply.

Notice must be served upon the trustees in the case of a lunatic as well as any other tenant for life, and, if necessary, trustees for the purposes of the Act must be appointed (*l*); but the committee of a lunatic tenant for life cannot give a valid notice for the purpose unless he has previously obtained authority from the Court in Lunacy to do so (*m*).

The Court in Lunacy will not, by sanctioning any sale, purchase, or enfranchisement, alter the rights of succession to the lunatic's property (*n*).

Where the protector of a settlement is a lunatic, whether so found or not, the Lord Chancellor, or other person or persons entrusted with the care and commitment of the persons and estates of lunatics, is protector in lieu of the lunatic (*o*).

Where a trustee, either original or substituted, is a lunatic or incapable of acting, the person or persons nominated for the purpose of appointing new trustees, or, if there are no such persons able and willing to act, then the surviving or continuing trustees or trustee, or the personal representative of the last surviving or continuing trustee, may appoint another person or persons to be a trustee or trustees in the place of the trustee being incapable (*p*), and the property

(*h*) *Re Baggs*, (1894) 2 Ch. 416, n.; 96 L. T. Journ. 198.

(*i*) *Beall v. Smith*, L. R. 9 Ch. 85, at p. 92; 43 L. J. Ch. 245; 29 L. T. 625; 22 W. R. 121; *Re Edwards*, 10 Ch. D. 605; 48 L. J. Ch. 233; 40 L. T. 113; 27 W. R. 611.

(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59 and 60.

(*l*) *Re Taylor*, 52 L. J. Ch. 728; 49 L. T. 420; 31 W. R. 596; W. N. (1883) 95.

(*m*) *Re Ray's Settled Estates*, 25

Ch. D. 464; 53 L. J. Ch. 205; 50 L. T. 80; 32 W. R. 458.

(*n*) *Re Barker*, 17 Ch. D. 241; 50 L. J. Ch. 334; 44 L. T. 33; 29 W. R. 873; *Re Ryder*, 20 Ch. D. 514; 51 L. J. Ch. 401; 46 L. T. 336; 30 W. R. 417.

(*o*) Fines and Recoveries Act, 1832 (3 & 4 Will. 4, c. 74), s. 33.

(*p*) The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (1); *Re Lemann's Trusts*, 22 Ch. D. 633; 52 L. J. Ch. 560; 48 L. T. 389; 31 W. R. 520.

may be vested by declaration in accordance with the Conveyancing Act.

Where a lunatic is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the judge in Lunacy may by order vest such land in such person or persons for such estate and in such manner as he directs, or may appoint a person to convey, and may release any land from any contingent right to which a lunatic is entitled, and appoint a person to convey the land or release such right (q).

See EASEMENTS AND PROFITS À PRENDRE—LIMITATION, STATUTES OF.

Requisitions.

1. *A. B. is understood to have been found by inquisition to be a lunatic since the settlement of the last. Unless the vendor can satisfy the purchaser, either (a) that A. B. was not of unsound mind at the date of the settlement, or (b) that there was a sufficient consideration for the settlement, and that he (the vendor) had no notice or reason to believe that the settlor was of unsound mind at the time, the vendor must obtain the concurrence of the committee of the lunatic. Failing this, the purchaser will decline to complete.*

2. *The tenant for life is stated to be of unsound mind. Has he been so found by inquisition? If not, there appears to be no means by which a title can be made under the Settled Land Acts, unless he is first found lunatic.*

3. *The order of the Court in Lunacy giving leave to the committee of C. D. to give notice under sect. 45 of the Settled Land Act, 1882, should be abstracted and must be produced.*

INSOLVENCY.

See BANKRUPTCY—SETTLEMENTS.

(q) 13 & 14 Vict. c. 60, ss. 3, 4; Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 135.

INSURANCE AGAINST FIRE.

Where after the date of the contract a fire occurs upon property contracted to be sold, the purchaser will have to bear the loss (*r*). The only safe course for a purchaser to pursue is, therefore, at once, on entering into his contract, to insure the premises against fire, for even if the vendor has insured them and recovers money in respect of damage done subsequently to the date of the contract but before completion, he cannot be called upon to pay it over to the purchaser (*s*), unless, of course, he has agreed to do so. As it is unusual to insure the premises until after the title has been accepted, a requisition in the form given below is generally made.

Requisition.

Is the property insured against fire? and, if so, in what office, and when does the policy expire? It is presumed that, pending completion, the vendor is willing to hold any existing policy in trust for the purchaser.

INTERLINEATIONS.

See DEEDS—WILLS.

INTESTACY.

Formerly upon an intestacy the intestate's fee simple estates, subject to the widow's right to dower or the husband's right to curtesy, descended to the heir of the last purchaser, but now the Land Transfer Act, 1897, provides that the legal estate in all real property vested in any person without a

(*r*) *Paine v. Meller*, 6 Ves. jun. 349; 5 R. R. 327.

(*s*) *Rayner v. Preston*, 18 Ch. D. 1; 50 L. J. Ch. 472; 44 L. T. 787; 29 W. R. 547.

right in any other person to take by survivorship; is on his death, after the 31st December, 1897, to devolve to and become vested in his legal personal representative as if it were a chattel real (*t*), who holds it for the persons beneficially entitled, and such persons have the same power of requiring a conveyance as persons entitled to personal estate have of requiring an assignment (*u*); and the legal personal representative may convey accordingly (*x*).

The intestate's fee tail estates, subject to the widow's right to dower or the husband's right to curtesy, descend to the heir of the body of the donee in tail. It seems doubtful whether the provisions of the Land Transfer Act, referred to above, apply to estates tail, probably they will be held to do so.

The intestate's estate *pur autre vie* devolves upon the heir of the *cestuis que vie*, if named, as special occupant. If the heir be not named as special occupant, such estates devolve upon the intestate's legal personal representatives.

The intestate's copyhold and customary property devolves upon his customary heir, and his personal property upon his administrator, or, where he has appointed an executor but not disposed of the property in question, upon his executor.

Letters of administration are usually accepted as sufficient evidence that a deceased person died intestate, but, as before the 1st January, 1898, it was not necessary that a will of realty should be proved, there is a slight risk in accepting such evidence of intestacy.

When letters of administration have not been taken out, proof that the deceased died without a will is afforded by a statutory declaration that a proper search for a will has been made and that no will has been found, and this, coupled with a search at the probate registry showing that no will has been proved, may be considered sufficient when such evidence is required.

(*t*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (1).

(*u*) *Ibid.* s. 2 (1).
(*x*) *Ibid.* s. 3 (1).

Requisitions.

1. *It must be proved that A. B. died intestate. Letters of administration to his estate should be produced.*

2. *As letters of administration have not been granted to the estate of the deceased, a statutory declaration as to his intestacy must be supplied to the purchaser.*

3. *On the death of C. D., deceased, the leasehold property devolved on his administrator, who does not appear to have assigned to the vendor as next of kin. The concurrence of the administrator in the assignment to the purchaser must be obtained.*

4. *The property, though freehold, is vested by the Land Transfer Act, 1897, in the administrator of A. B., deceased, and he must join in the conveyance to the purchaser.*

**INTESTATES' ESTATES ACT, 1890,
CHARGES UNDER.**

The Intestates' Estates Act provides that the real and personal estates of every man who dies intestate after the 1st September, 1890, leaving a widow but no issue, shall, in all cases where the value of such real and personal estates shall not exceed 500*l.*, belong to his widow absolutely and exclusively (*y*), and where the net value of such real and personal estates shall exceed 500*l.*, the widow of such intestate shall be entitled to 500*l.* part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such 500*l.* and interest at 4 per cent. (*z*).

This being so, it is necessary in cases where, after the date referred to above, the owner of an estate has died intestate without issue, and title is being made to his property, to require the release of the widow of her charge as well as of her dower, if any exists. The value for the purposes of the Act is twenty years' purchase of the annual value at the

(*y*) 53 & 54 Vict. c. 29, s. 1.

(*z*) *Ibid.* s. 2.

death of the intestate as fixed for the purposes of the property tax, less the gross amount of any mortgage and the value of any annuity (a). The act does not apply to cases of partial intestacy (b).

Requisition.

What was the value of the real and personal estate of the intestate, A. B.? Mrs. B. must join in the conveyance in order to release her charge.

ISSUE.

The word issue includes descendants of every degree, and is not confined to children (c), but, as a general rule, when there is found a gift to a person, and then a gift to the issue of that person, such issue to take the parent's share, the word issue is restricted to children (d), and this applies to a deed as well as a will (e). On the hearing of a case before the Court of Appeal in 1879, James, L. J., pointed out some curious consequences of the rule, and in the same case Brett, L. J., said: "I think, after the way in which *Sibley v. Perry* has been spoken of in subsequent decisions, we are not at liberty to say that it does not lay down a general rule. But I think the fate of that general rule will be the fate which usually accompanies a rule which is not liked, namely, that it will be applied to cases exactly like *Sibley v. Perry*, and to no others; or, in other words, it will be no general rule at all—and, after hearing what the effect of such a general rule may be as described by James, L. J., I should have no objection to be present at the funeral of *Sibley v. Perry*" (f).

(a) 53 & 54 Vict. c. 29, s. 3.

(b) *Re Twigg's Estate*, *Twigg v. Black*, (1892) 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604; 40 W. R. 297.

(c) *Davenport v. Hanbury*, 3 Ves. jun. 257; 3 R. R. 91.

(d) *Sibley v. Perry*, 7 Ves. jun. 522; 6 R. R. 183.

(e) *Pruett v. Osborne*, 11 Sim. 132, at p. 138.

(f) *Ralph v. Carrick*, 11 Ch. D. 873; 48 L. J. Ch. 801; 40 L. T. 505.

In gifts by will of real estate the word issue is often held to be a word of limitation and not of purchase. Thus, such a gift to A. for life and after his decease to his issue gives to A. an estate tail (*g*), and before 1838 this construction was held to apply notwithstanding that the gift to the issue contained words of distribution indicating that the issue were to take concurrently, such as “equally,” “share and share alike,” or “as tenants in common”; but words of distribution indicating that the issue are to take concurrently are sufficient indication in wills made or republished on or after the 1st January, 1838, that the issue are to take by purchase (*h*). The rule that “issue” is *prima facie* a word of limitation has no application to personal estate (*i*).

Requisitions.

1. *It appears from the abstract that the proposed mortgagors are the three out of the nine children of A. B., deceased, who survived him. A statutory declaration must be supplied showing that there were at the time of the testator's decease no issue of any of his children in existence.*

2. *Under the bequest of the leaseholds to A. for life and after his decease to his issue, it would seem that all the issue of A. living at the testator's death are entitled as joint tenants, and issue born subsequently, but before the death of A., would be admitted along with them. A proper pedigree must be furnished to the purchaser in order to enable him to discover who are the persons now entitled to the leaseholds.*

JOINT ACCOUNT CLAUSE.

See MORTGAGES.

(*g*) *Roddy v. Fitzgerald*, 6 H. L. C. 23.

(*h*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 28; *Montgomery v. Montgomery*, 3 Jo. & Lat. 47; 8 Ir.

Eq. R. 740; *Crozier v. Crozier*, 3 D. & War. 353; 2 Con. & L. 309; 5 Ir. Eq. R. 415.

(*i*) *Knight v. Ellis*, 2 Bro. C. C. 570.

JOINT STOCK COMPANIES.

See COMPANIES REGISTERED UNDER THE COMPANIES
ACT, 1862.

JOINT TENANTS.

A joint tenancy is that form of ownership which is created by a limitation in a deed or will to two or more persons either expressly as joint tenants or without indicating what kind of joint interests they are to take. All joint tenants are equally interested in the property limited to them, and on the decease of any of them without severing his undivided share, that share survives to the remaining joint tenants or tenant notwithstanding any disposition the deceased joint tenant may have made by will. There is no curtesy or dower in an estate held in joint tenancy.

A joint tenancy in fee simple may be created by deed by a grant to A. and B. and their heirs, or, since the 1st January, 1882, by a grant to A. and B. in fee simple (*k*); and, since the 1st January, 1838, a gift by will of real estate to A. and B. is sufficient to create a joint tenancy in fee (*l*).

A joint tenancy in tail special may be created by gift to A., B., and the heirs of their bodies, if A. and B. are persons who can possibly intermarry (*m*); but such a gift to more than two persons, or to two persons who cannot intermarry, will make them tenants in common in tail subject to the joint life estate (*n*).

A mistake which is sometimes made by persons intending to limit estates in joint tenancy is to devise them to several persons, such as A. and B., and the survivor of them, and the heirs of such survivor. Such a limitation gives to A. and B.

(*k*) Conveyancing Act, 1881 (44 &
45 Vict. c. 41), s. 51.

(*l*) Wills Act, 1837 (7 Will. 4 &

1 Vict. c. 26), s. 28.

(*m*) Co. Litt. 25 b.

(*n*) *Cook v. Cook*, 2 Vern. 545.

joint life estates with a contingent remainder in fee simple to the survivor (*o*).

When real or personal property was given to husband and wife before the 1st January, 1883, in such terms as would have constituted them joint tenants if they had not been husband and wife, they held not as joint tenants but as tenants by entireties. Such a limitation, however, contained in any deed or will after 1882 creates a joint tenancy (*p*).

If husband and wife were joint tenants before marriage, they still remained so after marriage, and did not become tenants by entireties (*q*).

A joint tenancy may be severed and turned into a tenancy in common—(1) by a disposition made by one of the joint owners amounting at law or in equity to an assignment of the share of that owner; (2) by mutual agreement between the joint owners (*r*). It is of importance for a purchaser when taking a conveyance from the survivor or survivors of two or more joint tenants, to ascertain whether any severance of the joint tenancy had taken place in the joint lifetime, and inquiry should be made with a view to throw upon the vendor's solicitor the responsibility of stating that they have no knowledge of any such severance.

Although there may be a limitation in a deed to A. and B. in fee simple so that they are joint tenants at law, they will, in the following cases, be deemed to be tenants in common in equity, namely, (1) where they are mortgagees (*s*), (2) where they are partners and the property is partnership property (*t*); (3) where they are purchasers and the purchase-money has been advanced by them in unequal shares (*u*).

See MORTGAGES—PARTITION—PARTNERSHIP—TENANTS BY ENTIRETIES—TENANTS IN COMMON.

(*o*) *Vick v. Edwards*, 3 P. W. 372; 2 Eq. Abr. 473.

(*p*) *Thornley v. Thornley*, (1893) 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311.

(*q*) Co. Litt. 187 b.

(*r*) *Re Wilks, Child v. Bulmer*, (1891) 3 Ch. 59; 60 L. J. Ch. 696; 65 L. T.

184; 40 W. R. 13.

(*s*) *Re Jackson, Smith v. Sibthorpe*, 34 Ch. D. 732; 56 L. J. Ch. 593; 56 L. T. 562; 35 W. R. 646.

(*t*) Co. Litt. 182 a; Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 20.

(*u*) *Lake v. Craddock*, 2 W. & T. 952; 3 P. W. 158.

Requisitions.

1. *The conveyance to A. and B. as joint tenants appears to have been in consideration of 1,000l. paid by A., and 500l. paid by B. Under these circumstances A. and B. were tenants in common in equity, and B.'s heir-at-law must therefore join in the conveyance to the purchaser.*

2. *Is the vendor or are his solicitors aware of any deed, act, matter or thing, which has operated to sever the joint tenancy of the vendor and A. B., deceased? The certificates of the Inland Revenue Commissioners, showing that the estate duty and succession duty leviable on the death of A. B., deceased, have been paid, must be produced and handed over to the purchaser.*

JOINTURE.

A woman is not entitled both to jointure and dower out of her husband's lands (*x*). In order to effectually prevent the wife claiming dower, the jointure must (1) be made before marriage, (2) take effect upon the death of the husband, (3) be for the widow's own life at least or during widowhood, (4) be made to the widow and not to another in trust for her, and (5) be made and expressed to be in satisfaction of dower (*y*).

If a woman before marriage expressly accepts any provision made in lieu of dower, she will be restrained in equity from claiming dower out of her husband's lands.

See DOWER.

Requisition.

Mrs. B., the widow of A. B., deceased, appears to be entitled to jointure out of, amongst other property, the land contracted to be sold. If she is still alive her concurrence must be obtained. If dead, her death must be proved in the usual way.

(*x*) The Statute of Uses (27 Hen. 8, c. 10), s. 4.

(*y*) 2 Blackstone, 138.

JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF.

No judgment entered up on or after the 29th July, 1864, affects land of any tenure until the land has been actually delivered in execution (z) ; but an order for the appointment of a receiver, is a process of execution within the meaning of this provision (a).

Every such delivery in execution is void as against a purchaser for value unless the writ or order is registered at the Land Registry Office (b). Registration ceases to have effect after five years, but may be renewed from time to time, and, if renewed, has effect for five years from the date of renewal (c).

Judgments entered on or after the 29th July, 1864, can be registered and re-registered at the Central Office of the Supreme Court, but the only advantage of such registration is that, in the event of the judgment debtor dying without having paid the debt, the judgment creditor may secure the preference given to judgment debts in administration (d).

A writ or other process of execution issued upon any such judgment may also be registered in the Central Office (e) ; the only object of such registration is to enable a summary order for sale under the Judgments Act, 1864, to be obtained, as this Act provides in effect that, before any creditor to whom any land of his debtor shall have been actually delivered in execution can obtain such summary order, his writ or other process of execution must be duly registered (e). Inasmuch, however, as the same object may be effected by registration at the Office of the Land Registry, there now

(z) The Judgments Act, 1864 (27 & 28 Vict. c. 112), s. 1.

(a) *Re Pope*, 17 Q. B. D. 743 ; 55 L. J. Q. B. 522 ; 55 L. T. 369 ; 34 W. R. 693.

(b) Land Charges, Registration, and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 6.

(c) *Ibid.* s. 5 (3).

(d) 23 & 24 Vict. c. 38, ss. 3, 4 ; Williams on Executors, 9th edit., pt. 3, bk. 2, chap. 2 ; *Evans v. Williams*, 11 L. T. 762 ; 13 W. R. 423 ; 11 Jur. (N. S.) 256 ; 2 Drew. & Sm. 324.

(e) 27 & 28 Vict. c. 112, s. 3.

appears to be no advantage in registering writs at the Central Office (*f*).

With regard to judgments entered before the 29th July, 1864, these will, for the most part, be statute barred, as no judgment can be enforced except within twelve years (*g*). But, inasmuch as it is possible for such a judgment to have been kept alive by the payment of interest or by successive acknowledgments, the law as to judgments after 1838, and before the 29th of July, 1864, may still be of importance.

Judgments entered before the 29th July, 1864, were a charge on real estate (*h*), but in order to affect a purchaser, mortgagee, or creditor, they had to be registered (*i*). Registration has effect only for five years, but before or after the expiration of that time any judgment can be re-registered, and such re-registration will have effect for five years from its date (*k*). The register of these judgments is now kept at the Central Office of the Supreme Court. Actual notice of an unregistered judgment will not affect any purchaser, mortgagee, or creditor (*l*).

As to judgments entered between the 23rd July, 1860, and the 28th July, 1864, inclusive, it was further necessary in order to affect a purchaser or mortgagee that a writ of execution should be issued and registered in the name of the creditor, and that such execution should be put in force within three calendar months from the time when it was so registered (*m*). The register of these executions is also kept at the Central Office, but registration at the Land Registry Office makes registration at the Central Office unnecessary (*n*).

All writs and orders affecting land may now be registered at the Office of the Land Registry (*o*), and if not so registered they are void as against purchasers for value. Registration

(*f*) 51 & 52 Vict. c. 51, s. 5 (4).

(*g*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8; *Jay v. Johnstone*, (1893) 1 Q. B. 189; 62 L. J. Q. B. 126; 68 L. T. 129; 41 W. R. 161; 4 R. 196.

(*h*) 1 & 2 Vict. c. 110, s. 13.

(*i*) *Ibid.* s. 19.

(*k*) 2 & 3 Vict. c. 11, s. 4; 18 & 19 Vict. c. 15.

(*l*) 3 & 4 Vict. c. 82, s. 2.

(*m*) 23 & 24 Vict. c. 38, s. 1.

(*n*) Land Charges, Registration, and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 5 (4).

(*o*) *Ibid.* s. 5 (1).

174 JUDICIAL SEPARATION AND PROTECTION ORDERS.

ceases to have effect after five years, but may be renewed from time to time, and if renewed has effect for five years from the date of renewal (*o*). Where the proceeding in which a writ or order was issued or made is registered as a *lis pendens* in the name of the person whose land is affected by it, the absence of registration at the Land Registry Office does not affect the operation of such registration (*p*).

See LIMITATION, STATUTES OF—SEARCHES.

Requisition.

It appears from the register at the Central Office that a judgment was in June, 1860, registered against A. B., and the same has since been duly re-registered. The judgment debt must be discharged, or the concurrence of the judgment creditor must be obtained.

JUDICIAL SEPARATION AND PROTECTION ORDERS.

The effect of a judicial separation is that the wife is from the date of the order and whilst the separation continues considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her, and such property may be disposed of by her in all respects as a *feme sole*, and on her decease, in case she dies intestate, it goes as it would have gone if her husband had been then dead; but if the wife again cohabits with her husband, the property she is entitled to when such cohabitation takes place is held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate (*q*).

(*o*) 51 & 52 Vict. c. 51, s. 5 (3).
(*p*) *Ibid.* s. 6 (b).

(*q*) Matrimonial Causes Act, 1857
(20 & 21 Vict. c. 85), s. 25.

It is to be observed that the above applies only to such property as the wife may acquire, or which may come to or devolve upon her after the decree, and not to property to which she was entitled in possession at the date of the decree (*r*).

A wife deserted by her husband may apply to a police magistrate or justices in petty sessions for an order to protect any money or property she may acquire by her industry, and property she may have become possessed of after such desertion, and the justices may order that such money and earnings and property shall belong to the wife as if she were a *feme sole*. The effect of such an order is that the wife during its continuance is deemed to be and to have been during such desertion in a like position in all respects with regard to property and contracts and suing and being sued as she would be if she had obtained a decree of judicial separation (*s*).

Where under a settlement a life interest for her separate use without power of anticipation had, before her desertion by her husband, devolved upon a married woman, who subsequently obtained a protection order, it was held that such interest did not come within the above provisions, and that consequently the restraint imposed by the settlement continued to attach (*t*).

Requisition.

Mrs. A. B., the vendor, appears to have been married and acquired the property contracted to be sold prior to the 1st January, 1883. Has she obtained a judicial separation or protection order? If so, the decree or order must be abstracted in chief. If she has not obtained such order, how is it proposed to make a title?

(*r*) *Waite v. Morland*, 38 Ch. D. 135; 57 L. J. Ch. 655; 59 L. T. 185; 36 W. R. 484.

(*s*) 20 & 21 Vict. c. 85, s. 21.

(*t*) *Hill v. Cooper*, (1893) 2 Q. B. 85; 62 L. J. Q. B. 423; 69 L. T. 216; 41 W. R. 500; 57 J. P. 663; 4 R. 418.

LAND IMPROVEMENT ACTS.

By a series of statutes known as the Public Money Drainage Acts, 1846 to 1856 (*u*), a person in actual possession or receipt of the rents and profits of any land (except a tenant for life or years paying a rent not less than two-thirds of a rack rent, and a tenant for years for a term which shall not have exceeded fourteen years from the commencement) is enabled to borrow money and charge such lands with its payment by means of a rentcharge lasting for twenty-two years. Such charges are registered at the office of the Board of Agriculture in the name of the person or persons to whom the advance was made.

By the Land Drainage Act, 1861 (*x*), the Commissioners of Sewers (now the local authority) may, with the consent of the Inclosure Commissioners (now the Board of Agriculture), commute an obligation imposed on any person by reason of tenure, custom, prescription or otherwise, to repair any walls, maintain any sewer, or do any other work within their jurisdiction (*y*); and any such commutation may be charged on the land in respect of which the obligation arose, and is recoverable like tithe rentcharge, and has priority over all incumbrances created or to be created by any proprietor of the lands charged (*z*). The register of such charge is at the office of the clerk of the peace of the county (*a*).

Certain other statutes (*b*) authorize a person in actual possession or receipt of the rents and profits of any land, except where such person is tenant for life or lives holding under a lease not renewable, or tenant for years not renew-

(*u*) The Public Money Drainage Acts, 1846, 1847, 1848, 1850, and 1856 (9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; and 19 & 20 Vict. c. 9).

(*x*) 24 & 25 Vict. c. 133.

(*y*) *Ibid.* s. 34.

(*z*) *Ibid.* s. 35.

(*a*) *Ibid.* s. 36.

(*b*) The Improvement of Land Act,

1864 (27 & 28 Vict. c. 114), as amended by the Limited Owners' Residences Act, 1870 (33 & 34 Vict. c. 56); The Limited Owners' Residences Act (1870) Amendment Act, 1871 (34 & 35 Vict. c. 84); The Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31); and the District Councils (Water Supply Facilities) Act, 1897 (60 & 61 Vict. c. 44).

able where less than twenty-five years are unexpired at the time of making application for the loan, to borrow money and charge the lands with its repayment by means of a rentcharge lasting for twenty-five years. Such charges are registered at the Land Registry Office and at the office of the Board of Agriculture in the name of the person or persons to whom the advance is made.

By the Public Health Act, 1875, where persons have advanced money for expenses which are by the Act, or are declared by the local authority to be private improvement expenses, the local authority may grant a rentcharge of 6% per annum, lasting for thirty years, for every 100% expended. The charge must be searched for at the office of the local authority (c).

A statute of 1890 (d), replacing the Artizans and Labourers Dwellings Acts, 1868 to 1882 (e), enables a local authority to grant to an owner a rentcharge of 6% per annum for every 100% expended in the execution of any works required by the Act. The rentcharge lasts for thirty years, and is a charge upon the estate, having priority to all existing and future charges, with the exception of quit-rents and other charges incident to tenure, tithe rentcharge, and charges under any Act authorizing advances of public money (f). These charges must be searched for at the office of the clerk of the peace for the county, and when the county is Middlesex or Yorkshire, at the local registry.

Terminable charges may be created under various other statutes, but the charges referred to above are of the most frequent occurrence.

All statutory charges created otherwise than by deed after the 31st December, 1888, must be registered at the office of the Land Registry, or they are void as against a purchaser for value, and even charges created before that date will not, after one year from the first assignment of the charge *inter*

(c) 38 & 39 Vict. c. 55.

(d) The Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

(e) 31 & 32 Vict. c. 130; 38 & 39

Vict. c. 36; 42 & 43 Vict. c. 63; 42 & 43 Vict. c. 64; 45 & 46 Vict. c. 54.

(f) 53 & 54 Vict. c. 70, s. 37.

vices taking place after that date, be recoverable against a purchaser for value unless they have been duly registered (*g*). Where there is no particular reason for supposing that any statutory charges exist, it is the usual practice to search for them at the Land Registry only.

See AGRICULTURAL HOLDINGS.

Requisition.

It is assumed that the vendor's solicitor is not aware of any charges affecting the property created under any statute and not disclosed by the abstract.

LAND TAX.

Land tax was first made perpetual in the year 1798 (*h*). Its amount varies from parish to parish, but in no case can it exceed 1s. in the £ on the annual value (*i*).

Land contracted to be sold is deemed to be subject to land tax, and the purchaser is not entitled to any compensation in respect of such tax if not expressly mentioned in the particulars or contract. Sometimes, however, the particulars state that land tax has been redeemed; when this is the case the purchaser should insist upon the production of the certificate of the Board of Agriculture, with the receipt of the cashier of the Bank of England attached (*k*).

Requisitions.

1. *The land being sold as free from land tax, the certificate of the Board of Agriculture, with receipt attached, must be produced and handed over to the purchaser on completion.*

2. *Is land tax payable in respect of the property contracted to be sold? If so, what is its amount?*

(*g*) Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), ss. 10, 12.

(*h*) The Land Tax Perpetuation Act, 1798 (38 Geo. 3, c. 60).

(*i*) The Finance Act, 1896 (59 & 60 Vict. c. 28), s. 31.

(*k*) *Poppleton v. Buchanan, Buchanan v. Poppleton*, 27 L. J. C. P. 210; 31 L. T. 83; 6 W. R. 372; 4 Jur. (N. S.) 414; 4 C. B. (N. S.) 20.

LAPSE.*See WILLS.***LEASE AND RELEASE.***See RELEASE.***LEASEHOLD PROPERTY.**

All leases exceeding the term of three years from the making thereof, and all leases not exceeding three years from the making thereof, whereupon the rent reserved does not amount to two-thirds of the full improved value of the premises demised, are required by the Statute of Frauds to be in writing, and signed by the lessor or his agent authorized in writing (*l*), and all such leases made since the 1st January, 1845, are void at law unless made by deed (*m*); but an instrument purporting to be a lease, though void at law in consequence of its not being made by deed, may be valid as an agreement for a lease if it satisfies the Statute of Frauds, whereby a contract for a lease or some memorandum thereof must be in writing, signed by the party charged or his agent lawfully authorized (*n*). If under an agreement for a lease the intended tenant takes possession, he at once becomes at law a tenant from year to year upon such of the terms of the agreement as are not inconsistent with a yearly tenancy (*o*); but in equity he is considered to hold possession under the agreement upon the same terms as if the lease had actually been granted, and will now be treated in every Court as so holding (*p*).

(*l*) 29 Car. 2, c. 3, s. 1.(*m*) 7 & 8 Vict. c. 76, s. 4; 8 & 9 Vict. c. 106, s. 3.(*n*) 29 Car. 2, c. 3, s. 4.(*o*) *Doe d. Rigge v. Bell*, 5 T. R. 471; 2 R. R. 642; 2 Sm. L. C. 116.(*p*) *Walsh v. Lonsdale*, 21 Ch. D. 9; 52 L. J. Ch. 2; 40 L. T. 858; 31 W. R. 109.

Any assignment or surrender of any lease, whether it exceeded three years from the making thereof or not, was required by the Statute of Frauds to be by deed or writing, signed by the person so assigning or surrendering or his agent lawfully authorized by writing (*q*); and, since the 1st January, 1845, an assignment of a lease and a surrender in writing of an interest which the Statute of Frauds required to be created by writing, are void at law, unless made by deed (*r*). The Statute of Frauds does not apply to surrenders by operation of law, but the grant of a new lease in possession with the oral assent of a person in possession under a prior subsisting lease does not operate as a surrender by operation of law, unless the old tenant gives up possession to the new tenant at or about the time of the grant of the new lease (*s*).

Whether an assurance be an assignment or underlease depends upon the effect of the assurance, and not upon the words employed. Thus, an assurance of a leasehold interest for a period less than the whole term is an underlease (*t*); while, even though an assurance purports to be an underlease but comprises the whole term, it may be an assignment (*u*). A covenant not to assign is not broken by the granting of an underlease (*x*); nor is a lessee who covenants with his lessor for the acts of himself and his "assigns," liable for a breach of the covenant in respect of the offence of his underlessee (*y*); but a lessee is entitled to the benefit of a covenant made with his lessor, his heirs, and assigns, and may sue to restrain a breach (*z*).

On a sale of leasehold property, a representation that it is

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|---|---|
| (<i>q</i>) 29 Car. 2, c. 3, s. 3. | 38 L. J. C. P. 91; 19 L. T. 282; |
| (<i>r</i>) 7 & 8 Vict. c. 76, s. 4; 8 & 9 Vict. c. 106, s. 3. | 17 W. R. 54. |
| (<i>s</i>) <i>Wallis v. Hands</i> , (1893) 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471; 3 R. 351. | (<i>x</i>) <i>Crusoe d. Blencowe v. Bugby</i> , 3 Wils. 234; 2 Bla. W. 766. |
| (<i>t</i>) <i>Cottes v. Richardson</i> , 7 Ex. 143. | (<i>y</i>) <i>Bryant v. Hancock & Co.</i> , (1898) 1 Q. B. 716; 67 L. J. Q. B. 607; 78 L. T. 397; 46 W. R. 386. |
| (<i>u</i>) <i>Langford v. Selmes</i> , 3 Jur. (N. S.) 859; 3 K. & J. 220; <i>Beardman v. Wilson</i> , L. R. 4 C. P. 57; | (<i>z</i>) <i>Tait v. Gosling</i> , 11 Ch. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394. |

held by lease, when it is, in fact, held in misdescription (a).

Where, after 1881, land held by purchaser must, unless the contrary appears, be taken to be held by lease was duly granted, and, where underlease, that the underlease and every superior lease was duly granted (b).

The acceptance, with knowledge of a breach of covenant, of rent accruing thereafter precludes a lessor from insisting upon a forfeiture by reason of such breach (c), but not so the acceptance after the breach of rent accrued due before it.

In sales, after 1881, of land held by lease or underlease on the production of the receipt for the last payment due for rent under the lease or underlease before the date of actual completion of the purchase, the purchaser must assume, unless the contrary appears, that all the covenants and provisions of the lease or underlease have been duly performed and observed up to the date of actual completion of the purchase, and further, in the case of an underlease, that all rent due under every superior lease has been paid, and all the covenants and provisions of every superior lease have been duly performed and observed up to that date (b).

It has always been necessary to obtain probate or letters of administration with the will annexed of a will relating to leaseholds or other personal property. The assent of the executor to a bequest of leaseholds is required to complete the title of the legatee, but, when given, the legal interest vests without assignment in the person in whose favour the bequest is made.

An executor may sell leaseholds and other personalty before obtaining probate, and that notwithstanding that such

(a) *Re Beyfus and Masters's Contract*, 39 Ch. D. 110; 59 L. T. 740; 37 W. R. 261; 53 J. P. 293.

(b) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (4), (5).

(c) *Goodright d. Walter v. Davids*, Cowp. 805; *Croft v. Lumley*, 6 H. L. C. 672; 27 L. J. Q. B. 321; 6 W. R. 523; 4 Jur. (N. S.) 903.

Property may be bequeathed by the will. His power to do so, however, ceases on his assenting to the bequest, and in any case, although he may institute proceedings for specific performance or otherwise before obtaining probate, he must obtain it before evidence in support of his claim is required, i.e., usually before the hearing.

Any one of two or more executors or administrators can sell and assign leaseholds vested in them as such, but all must join in actions for specific performance or otherwise relating to the sale (e).

It is a moot point where, on the death intestate of the owner of leaseholds, the legal interest in the term is until the appointment of an administrator; but, on the appointment of an administrator, the term vests in him, and the persons entitled beneficially under the Statute of Distributions cannot obtain the legal interest without an assignment from him.

An administrator *durante minore ætate* has, for the time during which he is appointed, all the powers of an ordinary administrator (f), and can therefore sell leaseholds, as can also an administrator *pendente lite* (g) while his functions last (h).

When successive interests are given by a testator in leaseholds, the question often arises as to whether there is any obligation on the person having the first interest, usually a tenant for life, to maintain the premises in such a state of repair as to satisfy the covenants in the lease. Where a testator gave leaseholds to two trustees, one of whom was his wife, upon trust for such wife for life, and after her death upon trust for sale and division of the proceeds, and authorized his trustees, if they should think advisable, to sell the premises and invest the proceeds, and allow his wife to receive

(e) Shep. Touchstone, 484.

(f) *Re Cope, Cope v. Cope*, 16 Ch. D. 49; 50 L. J. Ch. 13; 43 L. T. 566; 29 W. R. 98.

(g) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70.

(h) *Wieland v. Bird*, (1894) P. 262; 63 L. J. P. 162; 71 L. T. 267; 6 R. 574.

the income during her life, it was held by the Court of Appeal that there was no obligation on the tenant for life to put the premises, which were in a bad state of repair at the death of the testator, in such a state of repair as to comply with the terms of the leases (i). This decision appears to be directed to the question whether the tenant for life was bound to discharge the liabilities in respect of repairs which had accrued at the death of the testator, but is capable of a far wider interpretation; and accordingly, following this decision in a case in which the testator bequeathed a leasehold house, held for a term of 61 years, renewable every 14 years on fines for renewal and subject to covenants to pay rent, repair, and insure, to trustees in trust for his widow for life, with remainder in trust to her son for life, with remainders over, and bequeathed his residuary estate to his trustees upon trust out of income to pay all the costs, charges, and expenses of carrying into execution the trusts of his will, and subject thereto to hold such residuary estate upon trust for his children in settled shares, it was held that neither tenant for life was under any obligation to pay the rent, repair, insure, or to pay the fines or expenses of renewal (k); and, again, where a testator bequeathed a leasehold house, held by him on a repairing lease, to his niece for life, directly and without the intervention of trustees, and after her death to other persons absolutely, and appointed executors, it was held that the tenant for life was not bound to perform any of the covenants in the lease (l). But, on the other hand, where a testator directed his executors and trustees to arrange his affairs and manage his estate, and to retain certain leaseholds and to let them on lease, and pay the income derived therefrom to his wife for life for the benefit of herself and her children, and after her

(i) *Re Courtier, Coles v. Courtier*,
Courtier v. Coles, 34 Ch. D. 136; 56
 L. J. Ch. 350; 55 L. T. 574; 35
 W. R. 85.

(k) *Re Baring, Jeune v. Baring*,

(1893) 1 Ch. 61; 62 L. J. Ch. 50;
 67 L. T. 702; 41 W. R. 87; 3 R. 37.

(l) *Re Tomlinson, Tomlinson v.*
Andrew, (1898) 1 Ch. 232; 67 L. J.
 Ch. 97; 78 L. T. 12; 46 W. R. 299.

decease to divide the whole estate equally between his children, it was held by Stirling, J., on the construction of the will, that the income derived from the leaseholds meant the net income, and that the ground rents, current repairs, and other outgoings in respect of the premises must be borne by the tenant for life (*m*).

Notwithstanding the view reluctantly taken in *Re Baring, Jeune v. Baring* (*n*) and *Re Tomlinson, Tomlinson v. Andrew* (*o*), it is submitted that *Re Courtier, Coles v. Courtier, Courtier v. Coles* (*p*) only decided that the tenant for life was not bound to put in repair, in accordance with the lease, property which was not in such repair when the testator died, and that the question upon whom the liability is to fall is one of intention, to be gathered from each particular will, and if there is no indication whatever, one way or another, it is difficult to see on what principle the tenant for life can avoid taking the burden with the benefit conferred.

Leases frequently contain provisions authorizing the lessor to re-enter on breach of covenants. Before a lessor can take advantage of a forfeiture for breach of covenant for payment of rent, either he must, (1) unless the lease dispenses with it, make a formal demand in accordance with the requirements of the Common Law, or (2) there must be a half-year's rent in arrear and no sufficient distress to be found on the premises (*q*). On breach of covenants other than for the payment of rent before the 1st January, 1882, the lessor could at once re-enter in accordance with the terms of the covenant. Since the last-mentioned date, however, a right of entry on forfeiture under any proviso or stipulation in a lease or underlease is not enforceable by action or otherwise until the lessor has served on the lessee a notice specifying the particular

(*m*) *Re Redding*, (1897) 1 Ch. 876; 66 L. J. Ch. 460; 76 L. T. 339; 45 W. R. 457.

(*n*) (1893) 1 Ch. 61; 62 L. J. Ch. 50; 67 L. T. 702; 41 W. R. 87; 3 R. 37.

(*o*) (1898) 1 Ch. 232; 67 L. J. Ch. 97; 78 L. T. 12; 46 W. R. 299.

(*p*) 34 Ch. D. 136; 56 L. J. Ch. 350; 55 L. T. 574; 35 W. R. 85.

(*q*) 4 Geo. 2, c. 28, s. 2; 15 & 16 Vict. c. 76, s. 210.

breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy it, and in any case requiring him to make compensation in money, and the lessee has failed within a reasonable time so to remedy and compensate the lessor (*r*). These provisions do not extend—

- (1) To a covenant or condition against assigning, underletting, parting with the possession or disposing of the land leased ;
- (2) To a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest in the case of leases of—
 - (a) Agricultural or pastoral land ;
 - (b) Mines or minerals ;
 - (c) A house intended to be used as a public-house or beershop ;
 - (d) A house let as a dwelling-house with use of chattels not being in the nature of fixtures ;
 - (e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor or to any person holding under him.
- (3) To a condition for forfeiture on the bankruptcy of the lessee, or on taking in execution of the lessee's interest under any lease, other than those specified above, after the expiration of one year from the date of the bankruptcy or taking in execution of the lessee's interest, provided the lessee's interest be not sold within such one year. Until the expiration of such year, and after the expiration of the year, if the lessee's interest be sold within it, it would appear that the provisions of the Conveyancing Act, 1881, relating to forfeiture referred to above, apply. On a purchase, therefore, from or through a trustee in bankruptcy of property held under a lease in which any such condition

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 5.

appears, inquiry should be made by the purchaser to ascertain whether any notice has been given under the Act ;

- (4) To a covenant in a mining lease to allow access for inspection (s).

Where a lessor is proceeding to enforce his right of re-entry or forfeiture, the Court may, on the application of an under-lessee, make an order vesting the lease in such under-lessee for the term of the original sub-lease, or any shorter term, upon such conditions as the Court thinks fit (t).

A long term, that is to say, a residue of not less than 200 years, of a term of originally of at least 300 years, without any trust or right of redemption in favour of the freeholder or other person entitled in reversion, with no rent or merely a peppercorn or other rent having no money value, may be enlarged into a fee simple by declaration by deed made by (1) any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term ; but in the case of a married woman with the concurrence of her husband, unless she is entitled for her separate use, or unless she was married or her interest in the term was acquired after 1882 ; (2) any person being in receipt of income as trustee in right of the term or having the term vested in him in trust for sale ; or (3) any person in whom the term is vested as legal personal representative (u). A yearly rent of 3s., which had become charged on other land in exoneration of the leasehold premises in question, has been held not to be within the section (x) ; but a rent of one silver penny, if lawfully demanded, has been held to be within it (y). The provision referred to applies whether the immediate reversion of the term is freehold or not, but does not apply to any term

(s) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14 (6) ; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 2 (2), (3).

(t) 55 & 56 Vict. c. 13, s. 4.

(u) Conveyancing Act, 1881 (44 &

45 Vict. c. 41), s. 65.

(x) *Re Smith and Stott*, 29 Ch. D. 1009 ; 48 L. T. 512 ; 31 W. R. 411.

(y) *Re Chapman and Hobbs*, 29 Ch. D. 1007 ; 54 L. J. Ch. 810 ; 52 L. T. 805 ; 33 W. R. 703.

liable to be determined by re-entry for condition broken, or to any term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple (z). The estate in fee simple acquired by enlargement is subject to the same trusts, powers, executory limitations over, rights and equities, covenants, provisions and obligations, as it would have been subject to if it had not been so enlarged (a); and whether the term was originally created without impeachment of waste or not, the estate acquired includes the fee simple in all mines and minerals which at the time of enlargement have not been severed (b).

A lessee has constructive notice of his lessor's title, that is to say, a man who takes a lease is in a similar position with regard to notice as one who purchases the property leased; and this rule has not been affected by the provisions of the Vendor and Purchaser Act forbidding a lessee, in the absence of express stipulation, from inquiring into his lessor's title (c).

See ADMINISTRATORS, SALES AND MORTGAGES BY—
COVENANTS—EXECUTORS, SALES AND MORTGAGES
BY—LENGTH OF TITLE—RATES AND TAXES—
WILLS.

Requisitions.

1. *The will of A. B., deceased, must be proved and probate produced before completion.*

2. *How does the vendor propose to prove the assent of A. B.'s executor to the bequest of the premises?*

3. *The rents of the leasehold premises, the life interest in which Mrs. A. proposes to mortgage, are represented to be 300l. It appears questionable, on the words of the will and on the authorities, whether that sum is not reducible by the*

(z) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 11.

(a) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 65 (4).

(b) *Ibid.* s. 65 (6).

(c) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2 (2); *Patman v. Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.

ground rents and costs of repair. The assent of the trustees of the testator's will acknowledging their liability to these payments must be obtained for what it is worth.

4. *It is presumed that no notice has been given to determine the lease of 18 at the end of the first 14 years.*

5. *Having regard to the form of the assignment of the 18, the assignee of the piece of ground coloured yellow on the plan is liable to distress for the rent of the whole premises comprised in the lease by which the piece coloured yellow was demised, and also to an action for debt in respect of a proportionate part of the rent reserved by such lease. This fact was not stated in the particulars or known to the purchaser. He declines, therefore, to take an assignment unless a release is obtained, but he is willing to accept an underlease of the piece coloured yellow.*

6. *Have the drains mentioned in the lease of 18, been made, and is any sum due in respect of the expense of making the same to any and what person or body?*

7. *The vendor must at his own expense execute a declaration enlarging the residue of the term of 300 years into a fee simple. This must be done before the execution of the conveyance to the purchaser.*

8. *As the vendor contracted to sell the fee simple, an abatement from the purchase-money must be allowed sufficient to defray the cost of subsequently enlarging into a fee simple the term which, it appears, is all that the vendor has.*

9. *Is the property contracted to be sold insured in accordance with the covenant in the lease in the X. Insurance Office? The policy must be produced and held in trust for the purchaser.*

10. *When were the premises last painted inside and outside respectively?*

11. *Has any notice of want of repair been served which remains uncomplied with?*

12. *Is the vendor, or are his solicitors, aware of any breach of any of the covenants in the lease of* 18 ?

13. *Please supply the full name and address of the person to whom the rent is now payable.*

LEGACIES.

See CHARGES BY WILL—EXECUTORS, SALES AND MORTGAGES BY—LEASEHOLD PROPERTY.

LEGAL ESTATE.

A purchaser is in all cases, in the absence of stipulation to the contrary, entitled to have the legal estate in the premises he has contracted to purchase conveyed to or otherwise vested in him, but inasmuch as the Statute of Limitations transfers the estate at the expiration of the statutory period from the former owner to the person whose possession has barred his right (*e*), the Court will compel a purchaser to accept a title depending upon it, even though the vendor had no title at the date of the contract (*f*).

The provisions of the Real Property Limitation Acts, 1833 (*g*) and 1874 (*h*), do not run in favour of a beneficiary against an express trustee, but a beneficiary can get a title thereunder as against a mortgagee or a trustee other than an express trustee (*i*).

An equitable mortgagee under a mortgage or charge made by deed executed on or after the 28th August, 1864, has, under Lord Cranworth's Act, after the expiration of one year from the time when the principal money becomes payable, or

(*e*) *Scott v. Nixon*, 3 D. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8.

(*f*) *Games v. Bonner*, 54 L. J. Ch. 517; 33 W. R. 64.

(*g*) 3 & 4 Will. 4, c. 27.

(*h*) 37 & 38 Vict. c. 57.

(*i*) *Sands to Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397.

when any interest has been in arrear for six months, or after an omission to pay an insurance premium in accordance with the terms of the mortgage, a power to sell and convey the legal estate, which was vested in the mortgagor (*k*). This provision was repealed from the 1st January, 1882 (*l*), and the power of sale substituted by the Conveyancing Act, 1881 (*m*), does not contain any provision enabling an equitable mortgagee to deal with the legal estate (*n*).

See MORTGAGES—RECONVEYANCE—WILLS.

Requisitions.

1. *It appears from the abstract that the legal estate has been outstanding in a trustee for upwards of 40 years. Is the original trustee still living? If so, he must concur in the conveyance. If he is dead, a supplemental abstract should be delivered showing the devolution of the legal estate.*

2. *The legal estate under the will of John Smith was apparently vested in John Smith and Thomas Walker, upon trust. The trustees, if alive, or, if dead, the legal personal representative of the last survivor, must join in the conveyance.*

LEGAL PERSONAL REPRESENTATIVES.

See ADMINISTRATORS, SALES AND MORTGAGES BY—EXECUTORS, SALES AND MORTGAGES BY—LEASEHOLD PROPERTY—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE—WILLS.

(*k*) *Re Solomon and Meagher's Contract*, 40 Ch. D. 508; 58 L. J. Ch. 839; 60 L. T. 487; 37 W. R. 331; 23 & 24 Vict. c. 145, ss. 11, 15.

(*l*) Conveyancing Act, 1881 (44 &

45 Vict. c. 41), s. 71.

(*m*) *Ibid.* s. 19.

(*n*) *Re Hodson and Houe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.

LENGTH OF TITLE.

In the absence of a stipulation to the contrary, the length of title which can be required by a purchaser is now 40 years (*o*), but the title cannot commence *in nubibus* at the exact point of time which is represented by 40 years; it must commence at or before 40 years with something which is in itself, or which it is agreed, shall be a good root of title (*p*).

The statutory period is, however, very frequently reduced by condition, and even trustees may now purchase or lend money on the security of property with a shorter title, provided that such title is one which a person acting with prudence and caution would accept (*q*).

If the decision of Malins, V.-C., in *Bolton v. London School Board* (*r*) be taken as correct, and though perhaps its soundness may be doubted, it must be so regarded until overruled; a 40 years' title cannot be required where there is abstracted a deed or instrument more than 20 years old at the date of the contract which contains a recital that the vendor was seised in fee simple, such recital being evidence (*s*).

A purchaser buying a lease or underlease is, apart from any special contract he may make, entitled to an abstract of the original lease or underlease in addition to the usual 40 years' title (*t*); but he is not entitled to an abstract of dealings with the term prior to the necessary commencement of title unless there is some good reason arising from the special circumstances of the case (*u*); nor is he entitled to an abstract of the agreement to grant the lease, even though the lease should be made in exercise of some power (*v*).

On a contract to grant or assign a lease for lives, the pur-

(*o*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 1.

(*p*) North, J., in *Re Cox and Nere's Contract*, (1891) 2 Ch. 109, at p. 118; 64 L. T. 733; 39 W. R. 412.

(*q*) The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 8 (3).

(*r*) 7 Ch. D. 766; 47 L. J. Ch. 461; 38 L. T. 277; 26 W. R. 549.

(*s*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2.

(*t*) *Frend v. Buckley*, L. R. 5 Q. B. 213; 39 L. J. Q. B. 90; 22 L. T. 170; 18 W. R. 680; 10 B. & S. 973.

(*u*) *Williams v. Spargo*, W. N. (1893) 100.

(*v*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 4.

chaser is entitled to a 40 years' title, and if the lease was granted within that period can therefore call for the title to the reversion.

On a contract to grant or assign a lease for a term of years, whether to be derived or derived out of a freehold or leasehold estate, the intended lessee or assign is not entitled to call for the title to the freehold (*x*).

On a contract to grant or assign a lease for a term of years, whether to be derived or derived out of a leasehold interest with a leasehold reversion, the intended lessee or assign has the right to call for the title to the lease under which the intended lessor or assignor holds (*y*), but has not the right to call for the title to the leasehold reversion (*z*).

The effect of these statutory provisions is not to alter the rule that a lessee or sub-lessee, as the case may be, has constructive notice of the lessor's title. He is now in the same position with regard to notice as if he had, before the Acts, stipulated not to inquire into his lessor's title (*a*). It is, no doubt, reasonable that where a man is taking a mere occupation lease that the lessor's title should not be inquired into, but if he is intending to expend money on the premises he cannot safely adopt the statutory form of contract and abstain from inquiring into such title (*b*).

A 40 years' title must, in the absence of special condition, be adduced in the case of copyholds as well as in the case of freeholds; but where land of copyhold or customary tenure has, during the 40 years preceding the contract for sale, been converted into freehold by enfranchisement, then both the copyhold title must be shown up to the enfranchisement and the freehold title subsequently to it. The purchaser has not, however, the right to call for the title to make the enfranchisement (*c*).

(*x*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 1.

(*y*) *Gosling v. Woolf*, (1893) 1 Q. B. 39; 68 L. T. 89; 41 W. R. 106; 5 R. 81.

(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 3 (1), 13 (1).

(*a*) *Patman v. Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728;

29 W. R. 707; *Mogridge v. Clapp*, (1892) 3 Ch. 382; 61 L. J. Ch. 534; 67 L. T. 100; 40 W. R. 663.

(*b*) *Imray v. Oakshette*, (1897) 2 Q. B. 218; 66 L. J. Q. B. 544; 76 L. T. 632; 45 W. R. 681.

(*c*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 3 (2).

On the purchase of a reversionary interest commonly so called, the abstract must disclose the creation of the interest, at however remote a period such creation may have taken place.

In the case of all property held under grant from the Crown (*e.g.*, tithes held as lay property) the abstract must disclose the original grant. It may then omit the intermediate documents and take up the title again 60 years before the date of the contract. It seems doubtful whether the Vendor and Purchaser Act substituting 40 years applies to incorporeal hereditaments.

In the case of an advowson, 100 years' title must still, in general, be shown.

See ADVOWSONS—AGENTS.

Requisitions.

1. *The purchaser has agreed to purchase under an open contract, and he must therefore be supplied with an abstract commencing at least 40 years ago.*

2. *In addition to the 40 years' title disclosed the purchaser must be supplied with an abstract of the lease creating the term [or will or other document creating the reversionary interest].*

3. *The title is somewhat short, especially having regard to the fact that the proposed mortgagees are trustees. Why does the proposed mortgagor not disclose the prior title?*

4. *How did A. B. acquire the property? and where are the previous title deeds?*

5. *The contract to purchase was entered into by A. B. on behalf of the trustees of the will of the late C. D., deceased, and the trustees are advised that, having regard to the Trustee Act, 1893, s. 8 (3), they should be satisfied why a longer title is not adduced. Will the vendor's solicitors state the reason, so that the trustees' solicitors may advise the trustees whether, under the circumstances, the title is one which "persons acting with prudence and caution" would accept?*

LIEN.

Liens upon land arise under various circumstances. The following have important bearing on the investigation of title:—(1) a vendor's lien, where he has conveyed the land without having received the whole of the purchase-money; (2) a purchaser's lien, where he has paid the purchase-money, or part of it, without having received a conveyance, and the contract is rescinded through want of title or other default of the vendor; (3) a trustee's lien in respect of moneys paid or expenses incurred by him in connection with the trust estate; (4) the lien to the extent of the loss caused to the trust estate which a *cestui que trust* has on the beneficial interest of another *cestui que trust* who is liable for a breach of trust (*d*). With regard to all these liens, it may be stated as a general rule that they affect the property in the hands of all persons, except *bonâ fide* purchasers for value and mortgagees who have obtained the legal estate without notice of the lien (*e*).

A purchaser who abandons a contract by his own default, has no lien for the prematurely-paid purchase-money (*f*).

The provisions of Locke King's Act (*g*) making mortgaged real estates primarily liable for the mortgage debts upon them, were, by the first amending Act, declared to extend to a vendor's lien for unpaid purchase-money, as regards lands of a testator, and by the second amending Act such provisions (*h*) were declared to extend to the lands of persons dying intestate after the 31st December, 1877, and to the leaseholds of persons dying testate or intestate after that date (*i*); so that now the devisee, legatee, or heir-at-law takes land of any tenure, subject to and charged with the lien for unpaid purchase-money, unless, in the case of a devise, a

(*d*) *Jacobs v. Rylands*, L. R. 17 Eq. 341; 43 L. J. Ch. 280.

(*e*) *Frail v. Ellis*, 16 Beav. 350; 22 L. J. Ch. 467; 20 L. T. (O. S.) 197; 1 W. R. 72; *Davies v. Thomas*, 2 Y. & C. Ex. 234; 1 L. J. Ex. Eq. 21.

(*f*) *Dinn v. Grant*, 5 De G. & S. 451; *Ex parte Barrell*, *Re Parnell*,

L. R. 10 Ch. 512; 33 L. T. 115; 23 W. R. 846.

(*g*) 17 & 18 Vict. c. 113.

(*h*) 30 & 31 Vict. c. 69.

(*i*) 40 & 41 Vict. c. 34; *Re Kershaw*, *Drake v. Kershaw*, 37 Ch. D. 674; 57 L. J. Ch. 599; 58 L. T. 512; 36 W. R. 413.

contrary intention is expressed by the testator. In the case of a will of a person dying after the 31st December, 1867, a general direction that the debts, or the debts of the testator, shall be paid out of his personal estate does not show a contrary intention (*k*). Nor, in the case of a person dying after the 31st December, 1877, does a direction for payment of such debts out of the testator's residuary real and personal estate or residuary real estate (*l*).

Another class of lien is that of a solicitor who has a lien for costs due on the deeds and documents in his possession belonging to his clients. Such lien only extends to the deeds and documents themselves, and is not enforceable against the property which they represent. It is simply a right to retain the client's documents as against the client and persons representing him. As between the solicitor and third parties, the solicitor has no greater right to refuse production of documents on which he has a lien than his client would have if he had the documents in his own possession (*m*): on this principle, it is well established that a solicitor cannot embarrass a suit by keeping papers belonging to an estate which is being administered by the Court (*n*); and this applies, also, to all other representative actions (*o*) and to the winding-up of a company (*p*).

Where a solicitor has discharged himself he may be ordered to deliver the deeds and documents to a new solicitor, upon an undertaking being given to hold them without prejudice to his lien and to return them undefaced, and to allow the solicitor access for the purposes of any action by him for costs (*q*).

The question often arises whether a lien has been relinquished so as to be no longer enforceable. The taking of

(*k*) 30 & 31 Vict. c. 69.

(*l*) 40 & 41 Vict. c. 34.

(*m*) Lindley, M. R., in *Re Hawkes, Ackerman v. Lockhart*, (1898) 2 Ch. 1; 67 L. J. Ch. 284; 78 L. T. 336; 46 W. R. 445.

(*n*) *Belaney v. Ffrench*, L. R. 8 Ch. 918; 43 L. J. Ch. 312; 29 L. T. 706; 22 W. R. 177.

(*o*) *Boden v. Hensby*, (1892) 1 Ch. 101; 61 L. J. Ch. 147; 65 L. T. 744; 40 W. R. 205.

(*p*) *Re Capital Fire Insurance Association*, 24 Ch. D. 408; 53 L. J. Ch. 71; 49 L. T. 697; 32 W. R. 260.

(*q*) *Robins v. Goldingham*, L. R. 13 Eq. 440; 41 L. J. Ch. 813; 25 L. T. 900; 20 W. R. 277.

another security may be evidence that it has (r). The question is one of intention; as a rule, the mere giving of a personal security is not alone sufficient to take away the lien (s).

Requisitions.

1. *The conveyance of 1880 has no receipt indorsed. The vendor must produce evidence that the purchase-money was paid, and the land consequently freed from vendor's lien, or A. B. must join in the conveyance to release such lien if it exists.*

2. *It is presumed that the trustees claim no lien on the property, but will join in the conveyance for the purpose of conveying the legal estate.*

3. *The mortgagor's solicitors should supply the proposed mortgagee with a letter, signed by the trustees, to the effect that they claim no lien for costs or otherwise on the trust fund, and that the same now consists of the items specified in the proposal for mortgage.*

4. *It would appear from the master's certificate in the action of Smith v. Jones that a breach of trust was committed by the trustees of Jones' settlement at the instigation of A. B., the proposed mortgagor. It must be shown that the loss caused thereby has been made good, and that A. B.'s share is not liable to any lien in respect of it.*

LIFE ESTATE.

A life estate is an estate of freehold, whereas a term of years, however long, is a mere chattel interest, and personal and not freehold property. A life estate is one the duration of which is confined to some life or lives, but not to a fixed term of years. Thus, an estate given to A. for his life and

(r) *Mackreth v. Symmons*, 15 Ves. jun. 329; 10 B. R. 85; 2 W. & T. 926.

(s) See cases collected in notes to *Mackreth v. Symmons*, 2 W. & T. 926.

for the life of B. is a life estate, but an estate given for 1,000 years, if A. shall so long live, is only a term of years, liable to determine on the death of A.

Tenants for life, including tenants for years determinable on life, not holding merely under a lease at a rent, and tenants for the life of another, not holding merely under leases at a rent, have, under the Settled Land Acts, very wide powers of alienating settled estate (*t*). Independently of these powers, a tenant for his own life can alienate his estate, and can convey any estate so long as it does not endure beyond the term of his own life. If a tenant for his own life grant the whole of his estate to another, the grantee becomes a tenant for the life of the grantor, and is called a tenant *pur autre vie*, the grantor being called the *cestui que vie*. All estates for life, being freeholds, can be conveyed by any of the methods appropriate to the conveyance of fee simple estates.

If an estate *pur autre vie* be limited to any person without words of limitation, he may dispose of the estate *inter vivos* or by will (*u*), and if he do not so dispose of it the estate devolves upon his legal personal representative, and is distributable amongst his next of kin in the same manner as personal estate (*x*).

If land be limited to the grantee and his heirs during the life of another, the grantee may still dispose of it *inter vivos* or by will (*y*); but if the grantee do not so dispose of the property, then on his death his heir will be entitled as special occupant by the terms of the grant. In such a case the grantee's widow is not entitled to dower, the estate *pur autre vie* not being an estate of inheritance (*z*). But the interest of the heir is by statute charged with the payment of his ancestor's debts (*a*).

(*t*) See SETTLED LAND, p. 381.

(*u*) The Statute of Frauds (29 Car. 2, c. 3), s. 12; The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.

(*x*) 14 Geo. 2, c. 20, s. 9; 7 Will. 4 & 1 Vict. c. 26, s. 6.

(*y*) 29 Car. 2, c. 3, s. 12; 7 Will. 4 & 1 Vict. c. 26, s. 3.

(*z*) *Re Michell, Moore v. Moore*, (1892) 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.

(*a*) 29 Car. 2, c. 3, s. 12; 7 Will. 4 & 1 Vict. c. 26, s. 6.

If land be limited to the grantee and the heirs of his body during the life of another, the grantee takes an estate which he can dispose of *inter vivos*, but which he cannot dispose of by will (*b*). In such a case the heir of his body will, on the ancestor's death, take free from his debts, and as he takes as special occupant and not by descent free from the widow's claim to dower (*c*).

Successive limitations of an estate *pur autre vie* are permitted. Thus, an estate during the life of D. may be limited to A. for life, with remainder to B. in tail, with remainder to C. and his heirs; and in such a case the tenant in tail in remainder, with the concurrence of the tenant for life, may alienate the whole estate *pur autre vie*. The analogy with fee simple estates is supported as far as it can be (*d*).

A person claiming estates in remainder, reversion, or expectancy after the death of any person can, on affidavit that he has cause to believe that the *cestui que vie* is dead, obtain an order from the Chancery Division of the High Court for the production of the *cestui que vie*; and if he is not produced, such *cestui que vie* is taken to be dead (*e*).

Estates for life may arise by operation of law, as in the case of estates by the curtesy, estates in dower, and estates tail after possibility of issue extinct. In the case of estates by the curtesy and estates tail after possibility of issue extinct, the tenant by the curtesy and the tenant in tail have the powers of alienating the estate given by the Settled Land Acts to tenants for life.

See SETTLED LAND.

Requisitions.

1. *Proof must be furnished to the purchaser that the cestui que vie is alive. Where does he usually reside?*

(*b*) *Re Barber's Settled Estates*, 18 Ch. D. 624; 50 L. J. Ch. 769; 45 L. T. 433; 29 W. R. 909.

(*c*) *Re Michell, Moore v. Moore*, (1892) 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.

(*d*) *Allen v. Allen*, 2 D. & War. 307; 1 Con. & L. 427; 4 Ir. Eq. R. 472.

(*e*) The Cestui Que Vie Act, 1707 (6 Anne, c. 72).

2. *Proper proof must be forthcoming to show that all the three lives named in the lease of Blackacre are still in existence. What are the addresses of the three persons?*

3. *It is presumed that the proposed mortgagor is in good health. A policy of insurance upon his life for £ must be included in the mortgage. In what office is he insured or does he propose to insure?*

4. *Has the vendor any objection to attending at the office of the X. Assurance Society for examination in order that the purchaser of the life estate may effect an assurance on his life?*

LIMITATION, STATUTES OF.

The law on this subject, prior to the Real Property Limitation Acts, is not now of practical importance in the investigation of title. It is proposed, therefore, to confine this paper to the law under those statutes.

A purchaser may be compelled to accept a title depending upon the Statutes of Limitation (*f*); but inquiry should, in such a case, be made into the circumstances under which possession was taken, and as to the status of the person against whom the statutes are supposed to be running.

In cases where the Crown is entitled to possession of lands, its rights in and to any manors, lands, tenements, tithes, and hereditaments (except liberties and franchises) are barred after the period of 60 years has elapsed since such hereditaments or their rents were first held or taken adversely to the Crown (*g*).

A tenant in fee simple entitled to possession, who was not under the disability of infancy, coverture, or unsoundness of mind at the time when his right to make an entry or bring

(*f*) *Scott v. Nixon*, 3 D. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8; *Games v. Bonner*, 54 L. J. Ch. 517; 33 W. R. 64.

(*g*) The Crown Suits Act, 1769 (9 Geo. 3, c. 16); as amended by the Crown Suits Act, 1861 (24 & 25 Vict. c. 62).

an action first accrued, loses such rights after 12 years from the time when they first accrued (*h*).

A tenant in tail entitled in possession, who was not under the disability of infancy, coverture, or unsoundness of mind at the time his rights first accrued, loses such rights after 12 years from the time when they first accrued, as also does every person, whether under disability or not (*i*), whom such tenant in tail could lawfully have barred (*k*). The rights of a person whom the tenant in tail could not lawfully have barred are not lost until 12 years from the time when the rights of the tenant in tail first accrued, or 6 years from the time when such person's interest became vested in possession, whichever period is the longer (*l*).

Where a tenant in tail has, by deed enrolled, made an assurance which, by reason of the want of consent of the protector of the settlement, does not operate to bar persons claiming after or in defeasance of the estate tail, the rights of such persons are barred at the expiration of 12 years from the earliest time when such assurance would have operated to bar their rights if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed (*m*).

Where any other limited owner, not under disability, is entitled to possession, his rights of entry are barred after 12 years from the time when they first accrued (*n*).

The rights of persons claiming any future estate or interest are not barred until 12 years from the time when the rights of any person entitled to any particular estate on which such future estate or interest is expectant first accrued, or 6 years from the time when the interest of the person claiming such future estate became vested in possession, whichever period is the longer (*o*).

(*h*) The Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.

(*i*) *Austin v. Llewellyn*, 9 Ex. 276; 23 L. J. Ex. 11; 2 C. L. R. 409.

(*k*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 21, 22.

(*l*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.

(*m*) *Ibid.* s. 6.

(*n*) *Ibid.* s. 2.

(*o*) *Ibid.*

When any person is in possession or receipt of the profits of any land, or in the receipt of any rentcharge, by virtue of a lease in writing, by which a rent amounting to the yearly sum of 1*l.* or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rentcharge in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made by the person rightfully entitled, the right of the person entitled to such land or rentcharge, subject to such lease, or of the person through whom he claims to make any entry or distress, or to bring an action after the determination of such lease, is deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming, and no such right is deemed to have first accrued upon the determination of such lease to the person rightfully entitled (*p*). But if the rent be less than 1*l.*, or being 1*l.* or more it is not received by some person wrongfully claiming to be entitled to the reversion, no length of time will bar the right of the landlord to recover on the expiration of the term, and as long as the relation of landlord and tenant subsists the landlord retains his right to the rent (*q*).

No arrears of rent as such can be recovered for more than 6 years next after becoming due, or an acknowledgment in writing being given to the person entitled (*r*), although 20 years' arrears may be recovered in an action on a covenant to pay such rent (*s*). An acknowledgment by one of two trustees and executors against the wishes of the other is not binding (*t*).

The right to make an entry or distress, or bring an action

(*p*) 3 & 4 Will. 4, c. 27, s. 9; *Doe d. Angell v. Angell*, 9 Q. B. 328, at p. 356.

(*q*) *Archbold v. Scully*, 9 H. L. C. 360; 5 L. T. 160; 7 Jur. (N. S.) 1169.

(*r*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42.

(*s*) 3 & 4 Will. 4, c. 42, s. 3; *Paget v. Foley*, 2 Bing. N. C. 679; 3 Sc. 120; 2 Hodges, 32; *Strachan v. Thomas*, 12 Ad. & E. 536; 4 Per. & D. 229.

(*t*) *Astbury v. Astbury*, (1898) 2 Ch. 111; 67 L. J. Ch. 471; 78 L. T. 494; 46 W. R. 536.

to recover land from a tenant at will, is deemed to have first accrued either at the determination of the tenancy or at the expiration of one year next after the commencement of such tenancy, whichever shall first happen; but a *cestui que trust* is not deemed to be a tenant at will to his trustee for this purpose (*u*).

When any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period without any lease in writing, the right of the person entitled, subject to such tenancy, or of the person through whom he claims to make any entry or distress, or to bring an action to recover such land or rent, is deemed to have first accrued at the determination of the first of such years or other period, or at the last time when any rent payable in respect of such tenancy has been received, which shall last happen (*x*).

No action lies to recover any sum of money secured by any mortgage, or otherwise charged or payable out of any land or rent, but within 12 years next after a present right to receive such money has accrued to some person capable of giving a discharge for it, or within 12 years next after the last payment of interest in respect of it (*y*). This limitation of 12 years applies to the remedy on the covenant as well as to the remedy against the land, and that whether or not the mortgage and covenant are contained in the same deed (*z*).

When the money due upon a mortgage has been paid to a mortgagee, but no reconveyance has been executed, the mortgagor becomes, from the date of such payment, a tenant at will to the mortgagee, and the legal estate of the mortgagee is extinguished by 13 years' adverse possession of the mortgagor (*a*).

(*u*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 7.

(*x*) *Ibid.* s. 9.

(*y*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

(*z*) *Sutton v. Sutton*, 22 Ch. D. 511; 52 L. J. Ch. 333; 48 L. T. 95; 31 W. R. 369; *Fearnside v. Flint*, 22

Ch. D. 579; 52 L. J. Ch. 479; 48 L. T. 154; 31 W. R. 318.

(*a*) Real Property Limitation Act, 1837 (7 Will. 4 & 1 Vict. c. 28); 37 & 38 Vict. c. 57, s. 9; *Sands to Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397.

The fact that any sum of money or legacy, or any rent or interest is secured upon land by an express trust, does not give the *cestui que trust* any further time than he would have if no such trust existed (*b*).

The mortgagor is barred and loses his equity of redemption after 12 years from the time when the mortgagee took possession (*c*).

The statute does not begin to run in favour of an express trustee, or anyone claiming under him otherwise than for value against a *cestui que trust*, unless and until the land or rent has been conveyed to a purchaser for value (*d*); and no lapse of time enables a *cestui que trust* to obtain a statutory title against his express trustee (*e*).

Actions for breach of trust, where the claim is not founded on any fraud or fraudulent breach of trust, and where the action is not to recover trust property retained by the trustee, are barred after 6 years from the time the interest of the beneficiary becomes an interest in possession (*f*).

The only disabilities recognized by the Statutes of Limitation are infancy, coverture, lunacy, idiotcy, and unsoundness of mind; and in the case of a married woman's separate estate, coverture is not a disability.

Where a person was under disability at the time when his right of entry or action accrued, he may (notwithstanding the periods of 12 years or 6 years, during which he might have brought his action had he not been under any disability, has expired) enforce his claim within 6 years after he has ceased to be under any disability; or if such person die before ceasing to be under disability, the person claiming after him may bring his action within 6 years of such death (*g*). But no further time is allowed by reason of the disability of any person other than the person to whom the right first accrued (*h*).

(*b*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 10.

(*c*) *Ibid.* s. 2.

(*d*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25.

(*e*) *Ibid.* s. 7.

(*f*) Trustee Act, 1888 (51 & 52 Vict. c. 59).

(*g*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 3.

(*h*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 18.

Even a person under disability is not allowed more than 30 years from the time his right of action accrued, though he may have remained under one or more disabilities throughout the whole of that period (*i*).

An acknowledgment of the title of a person entitled, signed by the person in possession, and given to the first-mentioned person or his agent before the prescribed period has expired, has the effect of stopping the running of the statute, and the right of the person entitled is in all cases deemed to have first accrued only at the time when the last of such acknowledgments was given (*k*). An acknowledgment given after the prescribed period has expired has no effect (*l*). Nor has, it seems, an acknowledgment by one of two trustees and executors against the wishes of the other (*m*).

Where concealed fraud exists, time does not, except in favour of a *bonâ fide* purchaser for value without notice, begin to run until the time when such fraud is or might, with reasonable diligence, have been discovered (*n*).

In the case of a rentcharge the statute begins to run from the time when the rent was last received, and not from the time when the right to receive it first accrued (*o*).

In the case of an advowson the period within which it can be recovered is three consecutive incumbencies if they together amount to 60 years or more, or 100 years if the three consecutive incumbencies exceed that period (*p*).

Judgment debts, whether or not charged upon land (*q*), are barred after twelve years (*r*), as also are legacies, whether the executor has assented or not (*s*).

(*i*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 5.

(*k*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 14.

(*l*) *Sanders v. Sanders*, 19 Ch. D. 373, at p. 379; 51 L. J. Ch. 276; 45 L. T. 637.

(*m*) *Astbury v. Astbury*, (1898) 2 Ch. 111; 67 L. J. Ch. 471; 78 L. T. 494; 46 W. R. 536.

(*n*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 26.

(*o*) *Ibid.* s. 5; *De Beauvoir v. Owen*, 5 Ex. 166; 19 L. J. Ex. 177.

(*p*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 30, 33.

(*q*) *Hebblethwaite v. Peeter*, (1892) 1 Q. B. 124; 40 W. R. 318; *Jay v. Johnstone*, (1893) 1 Q. B. 189; 62 L. J. Q. B. 126; 68 L. T. 129; 41 W. R. 161; 57 J. P. 309; 4 R. 196.

(*r*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

(*s*) *Re Davis*, (1891) 3 Ch. 119; 61 L. J. Ch. 85; 65 L. T. 128; 39 W. R. 627; Real Property Limitation Act, 1874, s. 4.

Requisitions.

1. *Was not any reconveyance executed when the mortgage of , 18 , was paid off? If not, and the fact that such payment was made upwards of 13 years ago is relied on, the purchaser must be supplied with a statutory declaration by the vendor showing that no payment has been made or acknowledgment given during the last 12 years.*

2. *As the deed with which the title commences was executed by a tenant in tail, but was not enrolled, it could only operate to convey to the purchaser an estate for the life of the tenant in tail. If the purchaser is to accept a statutory title, the vendor must show that the persons entitled to the estate on the death of the tenant in tail have, subsequently to his death, had their rights barred by the Real Property Limitation Acts.*

3. *The legal estate in the premises sold appears to have long been outstanding in A. B. as trustee. As the Statutes of Limitation have no application to such a case as this, A. B. or his legal personal representative, or such other person as the trust estate is now vested in, must be a party to the conveyance.*

LIMITATION, WORDS OF.

See ENTAIL—FEE SIMPLE.

LIMITED OWNERS.

See SETTLED LAND.

LIS PENDENS.

See ACTION—SEARCHES.

LIVING.*See* ADVOWSONS.**LOCKE KING'S ACTS.***See* LIEN—MORTGAGES—VENDOR AND PURCHASER,
BANKRUPTCY AND DEATH OF, BEFORE COMPLETION.**LONG TERMS.***See* LEASEHOLD PROPERTY.**LOST TITLE DEEDS.**

It sometimes happens that one of the deeds forming part of a title adduced cannot be found; if it is not a recent deed, this is usually of little consequence, provided the circumstances do not raise any presumption that it contains anything which would prejudicially affect the title. Where, however, the recent title deeds are missing, care should be taken by a purchaser to obtain proper evidence of their contents and execution, and of the circumstances under which they were lost.

Even though the greater part of the title deeds be missing, the loss may not be a fatal objection to the title of a vendor if he can deliver over deeds containing recitals of such missing deeds or copies which would be evidence (*u*); but in such a case the vendor must furnish the purchaser with the

(*u*) *Prosser v. Watts*, 6 Madd. 59; Jur. 300; 7 Ad. & E. 783; 3 N. & 22 R. R. 238; *Doe d. Rogers v. Brooks*, P. 24; 1 W. W. & H. 89; *Harvey v. Phillips*, 2 Atk. 541; 3 Ad. & E. 513; *Gillett v. Abbott*, 2

means of showing what were the contents of the deeds, and of proving that they were duly executed, and this even where the deeds are accidentally destroyed by fire after the contract is made (x). Evidence should also be required of uninterrupted possession and enjoyment of the property by the vendor and his predecessors for as long a period as possible, and a bond of indemnity should be insisted upon (y).

If the mortgagee of property, the equity of redemption of which is sold, has lost the mortgage deed, the purchaser will nevertheless be compelled to pay the money secured upon having a reconveyance and an indemnity against the loss of the deed (z).

Requisitions.

1. *What evidence does the vendor offer of the contents and execution of the indenture of 18 , stated to be lost, and of the circumstances under which the loss occurred?*

2. *Having regard to the fact that the deeds stated to be lost include the recent title deeds and the conveyance to the vendor [or, the whole of the title deeds are stated to be lost; or as case may be], the purchaser will require evidence (a) of their contents and due execution; (b) of the circumstances under which the loss occurred; (c) of at least [according to circumstances, but not less than twelve] years' undisturbed possession by the vendor and his predecessors. The vendor must also enter into a bond of indemnity to the purchaser.*

LUNATICS.

See INSANITY.

(x) *Bryant v. Busk*, 4 Russ. 1; 28 R. R. 1.

(y) See and adapt Forms, Appen-

dices C. and D.

(z) *Stokoe v. Robson*, 19 Ves. jun. 385; 3 Ves. & B. 51.

MARKET GARDENS.*See* AGRICULTURAL HOLDINGS.**MARRIAGE, RESTRAINT ON.**

Conditions in general restraint of marriage of an unmarried person, whether male or female, are against public policy and void, but this rule does not extend to particular restraints, such as marriage with a particular person, or at a particular time, or without consent (s); nor does it extend to the second marriage of either a man or woman, as to which such a condition is valid, whether the person imposing it is the first husband or wife or a stranger (a).

If, for the purpose of providing for a person while unmarried, there is a limitation until marriage and then over, such gift over is good (b).

Requisition.

The consent of A. B. to the marriage of the mortgagor must be proved in order to show that no forfeiture has taken place under the terms of the testator's will.

MARRIAGES.*See* BIRTHS, MARRIAGES AND DEATHS—DIVORCE.

(s) *Yonge v. Furze*, 26 L. J. Ch. 352; 29 L. T. (O. S.) 34; 3 Jur. (N. S.) 603; 5 W. R. 394; 8 De G. M. & G. 756; *Harvey v. Aston*, 1 Atk. 361; *Jenner v. Turner*, 16 Ch. D. 188; 50 L. J. Ch. 161; 43 L. T. 468; 29 W. R. 99; *Perrin v. Lyon*, 9 East, 170; 9 R. R. 520; *Scott v. Tyler*, 1 W. & T. 535; 2 B. C. C. 431; 2 Dick.

712; *Haughton v. Haughton*, 1 Moll. 611.

(a) *Evans v. Rosser*, 2 H. & M. 190; *Newton v. Marsden*, 2 J. & H. 356; *Allen v. Jackson*, 1 Ch. D. 399; 45 L. J. Ch. 310; 33 L. T. 713; 24 W. R. 306.

(b) *Jones v. Jones*, 13 Sim. 561.

MARRIED WOMEN.

- (1) *As to property of women married, and whose title accrued, prior to 1883, not being property held for their separate use.*

The husband and wife must both join in conveying the wife's freeholds or any interest in them, and the deed must be acknowledged by the wife.

On birth of issue capable of inheriting, the husband becomes entitled to an estate by the curtesy in his wife's freeholds, whether her estate is legal or equitable.

Husband and wife can together convey the wife's interest in copyholds (c); such conveyance is effected by a joint surrender by husband and wife in respect of which the wife is separately examined before the steward of the manor (d), or, in the case of equitable estates, in the same manner as freeholds (e).

Freeholds and copyholds which are held by a married woman as bare trustee have, after the 6th August, 1874, been capable of being conveyed or surrendered in the same way as if she were a *feme sole* (f).

Leasehold property to which a married woman is entitled at law, as distinguished from equity, can, if it is or may possibly become vested in the wife during the coverture, be disposed of by the husband in his lifetime, but not by will. The consent of the wife is not necessary. If it is not possible for the leaseholds to vest in the wife during coverture, her interest can only, since the 31st December, 1833, be conveyed to a purchaser or mortgagee by a deed duly acknowledged in which her husband concurs (g).

In the conveyance of equitable interests in chattels real, a deed duly acknowledged should always be employed, as, other-

(c) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 77, 90.

(d) *Ibid.* s. 90.

(e) *Ibid.* s. 77.

(f) Vendor and Purchaser Act,

1874 (37 & 38 Vict. c. 78), s. 6; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 16.

(g) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.

wise, the wife's equity to a settlement may be set up as against a purchaser, even though her interest be an interest in possession and she concurs in the deed (*h*).

If the husband survives, the wife's leaseholds belong to him by survivorship without taking out letters of administration; but if he dies in his wife's lifetime without having disposed of them, they vest absolutely in the wife, and that notwithstanding any charge thereon which the husband may have purported to make.

Contingent, executory, and future interests, and possibilities coupled with an interest, in hereditaments of any tenure, and rights of entry, whether immediate or future, vested or contingent, have, after the 30th September, 1845, been capable of being disposed of by a married woman by deed acknowledged (*i*); and a married woman has, in like manner, had power to disclaim any estate or interest in hereditaments of any tenure (*k*).

Choses in action to which a married woman is entitled cannot, in general, be assigned so as to bind the wife in case the husband dies before they are reduced into possession (*l*); and equitable choses in action are further liable to the wife's equity to a settlement if reduced into possession during the joint lives of the husband and wife. But if the chose in action is reversionary and is not settled upon the wife by her marriage settlement or agreement for a settlement, it can, after the 31st December, 1857, be disposed of by a deed in which her husband concurs duly acknowledged by the wife (*m*). If the chose in action is a mortgage debt secured upon land of any tenure, it may, whether reversionary or not, be disposed of by the husband and wife by deed acknowledged in the usual way (*n*).

(*h*) *Hanson v. Keating*, 14 L. J. Ch. 13; 8 Jur. 949; 4 Ha. 1.

(*i*) 8 & 9 Vict. c. 106, s. 6.

(*k*) *Ibid.* s. 7.

(*l*) *Prole v. Soady*, L. R. 3 Ch. 220; 37 L. J. Ch. 246; 16 W. R. 445.

(*m*) Married Women's Reversion-

ary Interests Act, 1857 (20 & 21 Vict. c. 57).

(*n*) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74); *Williams v. Cooke*, 4 Giff. 343; *Miller v. Collins*, (1896) 1 Ch. 573; 65 L. J. Ch. 353; 74 L. T. 122; 44 W. R. 466.

- (2) *As to property of women married, and whose title accrued, prior to 1883, where the property is separate estate, whether under the Married Women's Property Act, 1870 (o), or by declaration in the instruments under which they are entitled.*

A married woman, prior to the 1st January, 1883, could not at law (as distinguished from equity) hold any property for her separate use. Courts of Equity, however, permitted her to hold and dispose of, *inter vivos* or by will, the equitable interest in property limited to her for her separate use in the same manner as if she were a *feme sole*.

In cases where the legal estate in property held for the separate use of a married woman is outstanding, the concurrence of the trustee in whom it is vested is, of course, necessary to convey the legal interest, but where the legal estate is not outstanding, it is conveyed in the same way as it would have been if the property were limited to the married woman without any indication that she was to take it for her separate use (*p*).

The Married Women's Property Act, 1870 (*o*), which came into operation on the 9th August, 1870, does not affect the law as above stated. It merely directs that the separate earnings of a married woman shall be deemed property settled to her separate use, and provides, in the case of a woman married on or after the 9th August, 1870, that any sum not exceeding 200*l.* coming to her under any deed or will, or any sum, whether it exceeds 200*l.* or not (*q*), to which she becomes entitled as next of kin of an intestate, and the rents and profits during her life, but not the fee simple (*r*), of any freehold or copyhold property to which she becomes entitled as heiress or co-heiress of an intestate, are to belong to her for her separate use.

(*o*) 33 & 34 Vict. c. 93.

(*p*) See (1), *supra*.

(*q*) *Re Voss, King v. Voss*, 13 Ch. D. 504; 42 L. T. 78; 28 W. R. 565.

(*r*) *Johnson v. Johnson*, 35 Ch. D.

315; 56 L. J. Ch. 326; 56 L. T.

163; 35 W. R. 329.

- (3) *As to property of women married, or whose titles have accrued, after 1882.*

The Married Women's Property Act, 1882 (*t*), enables a woman, whenever married, to hold and dispose of the legal as well as the equitable interest in all property to which she becomes beneficially entitled after the 31st December, 1882, in the same way as if she were a *feme sole*. It also allows a woman married after that date to hold and dispose of the legal and equitable interest in all her beneficial property, whenever acquired, but it does not apply to property to which a married woman is not beneficially entitled, but holds as trustee for some one else (*u*).

Although a married woman is entitled to property for her separate use, or under the Married Women's Property Act, 1882 (*t*), she may, nevertheless, be restrained from anticipating it, and thus be prevented from making a good title to a purchaser, but such a restraint does not affect her right to dispose by will of her separate estate, whether legal or equitable.

See ACKNOWLEDGMENT — ANTICIPATION, RESTRAINT AGAINST—COVENANTS—DISCLAIMER—DIVORCE—ENTAIL—ESTOPPEL—JUDICIAL SEPARATION AND PROTECTION ORDERS—SETTLED LAND—TENANTS BY ENTIRETIES—WILLS.

Requisitions.

1. *As Mrs. B. was married and became entitled to the property prior to 1883, her husband must join, and the deed must be acknowledged by her.*

2. *The vendor's husband must concur in the conveyance to the purchaser in order to pass the legal estate in the leaseholds to which the vendor became entitled in 1880.*

(*t*) 45 & 46 Vict. c. 75.

(*u*) *Re Harkness and Allsopp's Con-*

tract, (1896) 2 Ch. 358; 65 L. J. Ch. 726; 74 L. T. 652; 44 W. R. 683.

3. *Mrs. C.'s will, whereby she devised to the vendor all her real estate, could not operate upon the legal estate of Whiteacre, as she became entitled thereto for her separate use prior to the Act of 1882. Her heir-at-law, or other the person in whom the legal estate in the premises is now vested, must be made a party to the conveyance to the purchaser.*

MERGER.

Subject to the qualifications mentioned hereafter, when two estates in the same land meet in the same person without the intervention of any other estate, or where the two estates are freehold with the intervention only of an estate for years, merger takes place. Thus, an estate for a term of years of whatever length will merge in a life estate. An estate tail does not, however, merge in the fee simple expectant on its determination, although both estates become vested in the same person.

When two estates became vested by operation of law in the same person in different rights, merger did not occur, and although at common law merger took place if the union was the result of the action of a party, yet relief would be given in equity to a person equitably entitled to the estate thus merged. And now, after the 31st October, 1875, there has been no merger by operation of law only of an estate the beneficial interest in which would not be deemed to be merged or extinguished in equity (x).

If the owner of an estate creates an estate or interest in it, and his own estate is afterwards merged, the estate or interest so created is not affected by the merger.

Where the reversion expectant on a lease of any tenements or hereditaments of any tenure is, after the 31st December, 1844, surrendered or merged, the estate which confers, as against the tenant under the same lease, the next vested

(x) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4).

right to the same tenements or hereditaments is (to the extent and for the purpose of preserving such incidents to and obligations on the same reversion, as, but for the surrender or merger, would have subsisted) deemed the reversion expectant on the same lease (z).

Where the purchaser of an estate pays off an incumbrance upon it, the incumbrance paid off is merged unless the contrary intention appears (a).

Requisition.

The purchase of the lease for 99 years created by the indenture of , 188 , appears to have been by J. S., the sub-lessee of the property under the lease for 21 years from the of , 189 . That term will, therefore, have merged. Who is now in possession of the property, and what is the nature of the tenancy? Who are the present ground landlords, and to whom is the rent usually paid?

MINES AND MINERALS.

The mines and minerals lying under the surface are included in the word land used in its ordinary sense (b); the maxim being *Cujus est solum, ejus est usque ad cælum et ad inferos*. To this rule there are, however, certain exceptions and qualifications:—(1) The gold and silver got from gold and silver mines belong to the Crown (c). (2) In the case of mines worked for copper, tin, iron, or lead the Crown is entitled to take the ores which contain gold or silver at fixed prices (d). (3) In case of copyhold land the lord is entitled

(z) 7 & 8 Vict. c. 76, s. 12; Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 9.

(a) *Toulmin v. Steere*, 3 Mer. 210; *Adams v. Angell*, 5 Ch. D. 634; 46 L. J. Ch. 352; 36 L. T. 334; 25 W. R. 139.

(b) 2 Blackstone, p. 17.

(c) *Att.-Gen. v. Morgan*, (1891) 1 Ch. 432; 60 L. J. Ch. 126; 64 L. T. 403; 39 W. R. 324.

(d) 1 Will. & M. c. 30; 5 Will. & M. c. 6.

to the minerals, but cannot, unless by custom of the manor, come upon the land to work them (*e*). (4) Where copyhold land is enfranchised under the Copyhold Acts, the right of the lord to the minerals remains vested in him (*f*). (5) Occasionally the lord of the manor is entitled by local custom to the minerals under freeholds (*g*). (6) Railway or waterwork companies taking land under statutory powers do not acquire the minerals except by express grant (*h*).

Trustees, unless expressly empowered by the instrument creating the trust, could not formerly sell the surface of land separately from minerals, but after the 6th August, 1862, they have had power to do so with the sanction of the Court (*i*). The power, prior to the 1st January, 1894, was held to apply to mortgagees (*k*); but as the provisions of the Trustee Act, 1893 (*l*), replacing the earlier statute, did not appear to include mortgagees, the omission was remedied by the Trustee Act (1893) Amendment Act, 1894 (*m*).

If a contract be entered into to sell freeholds without stating that the minerals do not belong to the vendor and will not be conveyed, the purchaser may repudiate it; specific performance of the contract will not be ordered even if the vendor, after the repudiation, obtains a title to the minerals (*n*), though repudiation is not, it would seem, of itself an answer to a claim for damages if the vendor, before the date fixed for completion, was in a position to make a good title to the whole property (*o*).

On a sale, exchange or partition under the Settled Land Acts any restriction with respect to mines and minerals or

(*e*) *Att.-Gen. v. Tomline*, 5 Ch. D. 750; 46 L. J. Ch. 654; 36 L. T. 684; 25 W. R. 803.

(*f*) 4 & 5 Vict. c. 35, s. 82; 15 & 16 Vict. c. 51, s. 48; 57 & 58 Vict. c. 46, s. 23.

(*g*) *Curtis v. Daniel*, 10 East, 273.

(*h*) 8 & 9 Vict. c. 20, s. 77; 10 & 11 Vict. c. 17, s. 18.

(*i*) 25 & 26 Vict. c. 108, s. 2; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 44; Trustee Act, 1894 (57 &

58 Vict. c. 10), s. 3.

(*k*) *Re Beaumont's Mortgage Trusts*, L. R. 12 Eq. 86; 40 L. J. Ch. 400; 19 W. R. 767.

(*l*) 56 & 57 Vict. c. 53, s. 44.

(*m*) 57 & 58 Vict. c. 10, s. 3.

(*n*) *Bellamy v. Debenham*, (1891) 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.

(*o*) *Bellamy v. Debenham*, (1891) 1 Ch. 412, at pp. 420, 422; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.

out special power contained in the mortgage deed (i), grant a mining lease.

See LEASEHOLD PROPERTY.

Requisition.

It appears from the abstract of title that the land was formerly copyhold, and that on enfranchisement the lord retained the minerals; as the contract did not except minerals, the concurrence of the lord must be obtained [or the purchaser, therefore, is not bound by the contract which he hereby repudiates].

MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE.

Formerly, the mortgagee's estates in mortgaged property could be devised by will, and, in the absence of such devise, descended in the same manner as a beneficial interest to the heir-at-law, who, however, held it subject to the rights of the persons beneficially interested in the money secured. Mortgaged estates, like trust estates, passed by a devise in general terms, unless an intention to the contrary could be collected from the will (k).

Between the 1st January and the 30th September, 1845, inclusive, the legal personal representative of a deceased mortgagee had power, on receipt of the mortgage money, to convey the legal estate; provided that (1) such legal personal representative was entitled to the mortgage money; (2) possession had not been taken; and (3) no action or suit was pending (l).

With regard to the estates of persons dying between the

(i) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18 (14).

(k) *Braybroke (Lord) v. Inskip*, 8 Ves. jun. 417; 7 R. R. 106; Tu. L. C. 322; *Bainbridge v. Ashburton*

(*Lord*), 6 L. J. Ex. Eq. 73; 2 Y. & C. 347.

(l) 7 & 8 Vict. c. 76, s. 9; 8 & 9 Vict. c. 106, s. 1.

7th August, 1874, and the 31st December, 1881, inclusive, the legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee had been admitted, might, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage was in form an assurance subject to redemption, or an assurance upon trust (*m*); but the legal personal representative could not transfer a mortgage of a freehold estate (*n*), or exercise the power of sale (*o*).

On the death of mortgagees after 1881, mortgaged estates of inheritance, or limited to the heir as special occupant, vested in any person solely, devolve on his legal personal representatives like a chattel real, notwithstanding any testamentary disposition he may have made (*p*); but since the 16th September, 1887, the provisions of the Conveyancing Act on this point do not apply to copyholds vested in the tenant on the court rolls of any manor (*q*). The effect of this is, that copyhold and customary land to which a mortgagee has been admitted devolved on his death, on or after the 16th September, 1887, in the same manner as before 1882; but as regards deaths after the 31st December, 1881, and before the 16th September, 1887, the legal estate in such copyholds which, under the Conveyancing Act, had, on the death of the mortgagee, devolved upon his personal representatives, was, on the 16th September, 1887, divested from them, and vested in his customary heir or devisee; but the validity of any disposition of the property made by the personal representatives before that date is unaffected (*r*).

Mortgaged leaseholds upon a death, whenever occurring, devolve upon the legal personal representatives of the mortgagee.

(*m*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 4.

(*n*) *Re Spradbery's Mortgage*, 14 Ch. D. 514; 49 L. J. Ch. 623; 43 L. T. 82; 28 W. R. 822; *Re Brook's Mortgage*, 25 W. R. 841.

(*o*) *Re White*, 29 W. R. 820.

(*p*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.

(*q*) The Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45; The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 88.

(*r*) *Re Mills' Trusts*, 37 Ch. D. 312; 57 L. J. Ch. 466; 58 L. T. 620; 36 W. R. 393.

Where a mortgage is made to two or more persons as joint tenants, upon the death of one of them his estate devolves upon the remaining mortgagee or mortgagees.

See MORTGAGES.

Requisitions.

1. *The devise of the legal estate in the mortgaged premises by A. B. did not vest such estate in the devisee, inasmuch as A. B. died since the Conveyancing Act, 1881, came into operation. The legal estate is therefore vested in the legal personal representatives under sect. 30, and they must join in the conveyance.*

2. *A. B. having been admitted tenant of the property, sect. 30 of the Conveyancing Act does not apply, and the legal estate passed on his death intestate, after the 15th September, 1887, to his customary heir, who must join in the assurance to the purchaser.*

MORTGAGES.

Powers of sale by mortgagees may be either express or statutory. They will not, independently of agreement or statute, be implied in equity, and when expressed they are strictly construed.

Several questions suggest themselves on considering a title depending upon the exercise of a mortgagee's power of sale, *e. g.*, To whom is the power of sale given? Has any event happened to authorize the sale? Does any money remain owing on the security? Whether or not these questions, or any of them, are material to the title shown depends upon the date of the mortgage.

All mortgages made by deed after the 27th August, 1860, impliedly contain powers of sale, unless any contrary intention is stated in the deed (*r*).

(*r*) 23 & 24 Vict. c. 145, s. 11; 44 & 45 Vict. c. 41, s. 19.

In mortgages executed after the 27th August, 1860, and before the 1st January, 1882, such power did not arise until the expiration of one year after the principal had become payable, or some interest had been in arrear for six months, or after any omission to pay any premium on any insurance, and in either case six months' notice in writing to the mortgagor was required (*s*). In mortgages after the 31st December, 1881, the power of sale arises only after notice requiring payment of the mortgage money has been served on the mortgagor, and default has been made in payment for three months after such service, or when some interest under the mortgage is in arrear for two months, or there has been a breach of some provision in the mortgage, or in the Conveyancing Act, 1881, other than a covenant for payment of mortgage money or interest (*t*). On a sale in professed exercise of either of these statutory powers, the title of a purchaser cannot be impeached on the ground that no case has arisen to authorize the sale (*u*); but this does not preclude a person who has contracted to purchase from a mortgagee purporting to sell under his statutory power of sale from inquiring whether the vendor was in a position to exercise the power; nor from proving *aliunde* that the power was improperly exercised (*v*).

It must be observed that the statutory powers are implied only in mortgages by deed; so that, in the case of equitable charges created otherwise than by deed, an express power is still required.

An express power of sale was usually given to the mortgagees, "or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns," and this is still usual in cases where an express power is required. Any deviation from this form should be looked upon with suspicion. Thus, if the power be merely given to the mort-

(*s*) 23 & 24 Vict. c. 145, s. 11.

(*t*) 44 & 45 Vict. c. 41, s. 20.

(*u*) 23 & 24 Vict. c. 145, s. 13;
44 & 45 Vict. c. 41, s. 21 (2).

(*v*) *Life Interest and Reversionary Securities Corporation v. Hand-in-Hand Fire and Life Insurance Society*, (1898) 2 Ch. 230; 67 L. J. Ch. 548; 78 L. T. 708; 46 W. R. 668.

gagees, it is conceived it could not be exercised by the survivors or survivor, and if given to a sole mortgagee without mentioning his executors or administrators, it could only be executed by the mortgagee during his life.

The power of sale is not assignable; so that a power of sale given to a person without mentioning his assigns cannot be assigned, unless the deed shows with sufficient clearness that it was intended that it should be. "There must be some words of limitation which, on a fair and proper construction of the whole instrument, show the intention that the power should be exercised by some other person than its original donee" (*x*). Where, therefore, a member of a building society mortgaged property to the trustees of the society, and the mortgage deed empowered "the trustees or trustee for the time being of the society" in case of default to sell the mortgaged property, and the mortgage was afterwards, without the concurrence of the mortgagor, transferred to R., who was not a member of the society, it was held that (assuming, but not deciding, the validity of the transfer), upon the construction of the deed, the power of sale could not be exercised by any person other than the trustees or trustee for the time being of the society (*y*).

If the power of sale be expressed to be exercisable by the person or persons to whom the mortgage money shall for the time being be payable, or if the mortgage be made by deed on or after the 28th August, 1860 (*z*), the person to whom the mortgage money is for the time being payable is the proper person to exercise the express or statutory power of sale.

Where mortgages contain express powers of sale, purchasers are, in general, protected by a clause in the mortgage deed from inquiring whether any event has happened to authorize

(*x*) Chitty, L. J., in *Re Rumney and Smith's Contract*, (1897) 2 Ch. 351, at p. 360; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

(*y*) *Re Rumney and Smith's Contract*,

(1897) 2 Ch. 351; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

(*z*) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 11; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 21 (4).

a sale, and purchasers of property sold under statutory powers are, as stated above, also protected (*a*). But on a purchase of property sold by a mortgagee under a mortgage to which the statutory powers do not extend, and which, even if containing an express power, does not contain a clause relieving a purchaser from inquiry, the purchaser must insist upon evidence of the happening of the event which authorizes the sale. In no case will a purchaser be protected where he knows of an irregularity which cannot have been waived (*b*).

A power of sale is given solely to secure the mortgage debt, and ceases to exist as soon as the mortgage is paid off. A purchaser should in all cases see that he is protected by agreement of the mortgagor or by statute from the necessity to inquire whether any money remains owing upon the security. As to what words are sufficient to protect a purchaser, see *Dicker v. Angerstein* (*c*). Under mortgages made by deed after the 31st December, 1881, the purchaser is protected by statute (*d*). There does not appear to be any provision in Lord Cranworth's Act so protecting a purchaser: therefore, on sales of property under powers in mortgages executed prior to the 1st January, 1882, or which, whenever executed, are not made by deed, a purchaser must insist upon evidence that some money remains owing on the security, unless proper provisions are contained in the instrument relieving purchasers from doing so.

In express powers of sale it is usually provided that the mortgagees "or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns," should be able to give a receipt for the purchase-money. Some such power is necessary, otherwise it would be necessary for the purchaser to inquire into the exact state

(*a*) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 13; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 21 (2).

(*b*) *Schoyn v. Garfit*, 38 Ch. D. 273; 57 L. J. Ch. 609; 59 L. T. 233; 36 W. R. 513; *Re Thompson and Holt*,

44 Ch. D. 492; 59 L. J. Ch. 651; 62 L. T. 651; 38 W. R. 524.

(*c*) 3 Ch. D. 600; 45 L. J. Ch. 754; 24 W. R. 844.

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 22 (1).

of the mortgage debt, and to pay the mortgage money to the mortgagee, and the balance, if any, to the mortgagor. Sometimes, instead of being given as above, the power is given to the person or persons exercising the power of sale, or to the person or persons entitled to receive and give a discharge for the mortgage money.

Persons who exercise the statutory power of sale given by Lord Cranworth's Act (*e*), which applies to mortgages executed by deed on or after 28th August, 1860, and before the 1st January, 1882, can give a receipt for the purchase-money; while in the case of mortgages made by deed after the 31st December, 1881, the receipt of a mortgagee or person deriving title under him is a sufficient discharge for money arising under the power of sale conferred by the Conveyancing Act, 1881 (*f*).

There is usually no difficulty in discovering the person who is entitled to the mortgage money. The right, in general, passes with the mortgage security, and a transfer *inter vivos* of the security effects a transfer of the debt (*g*). Consequently, no notice is necessary to complete the transferee's title to the debt as against the title of a subsequent transferee; it is, however, usually given so as to prevent the mortgagor making payments on account of the mortgage debt and interest to the transferor. On the death of a mortgagee, the right to the debt, being personal estate, passes to his legal personal representative.

Where an estate is limited by a mortgage to two or more persons as mortgagees without words showing how they are to take, they are joint tenants at law, and the legal right to sue on the covenant passes to the survivors or survivor. In equity, however, they are presumed to be tenants in common unless there are words in the instrument to rebut this presumption. For this purpose all mortgages executed before the 1st January, 1882, where there are more mortgagees than one, must, in

(*e*) 23 & 24 Vict. c. 145, s. 12.

(*f*) 44 & 45 Vict. c. 41, s. 22 (1); s. 2 (vi).

(*g*) *Jones v. Gibbons*, 9 Ves. jun. 407; 7 R. R. 247.

order to enable the survivor to give a receipt, contain a declaration that the mortgage money belongs to the mortgagees on a joint account, and this is sufficient to protect a purchaser who has not actual notice that the joint account has been severed, or that the mortgagees are in fact tenants in common, though as between the mortgagees themselves such declaration is not conclusive (*h*).

A power to the survivors or survivor to give a receipt for the mortgage money seems to be sufficient notwithstanding notice that the mortgagees are tenants in common, and in this case there would appear to be no necessity for a joint account clause.

A joint account clause, or a clause enabling the survivors or survivor of two or more mortgagees to sell, is not sufficient to throw upon the purchaser an obligation to inquire whether or not the mortgagees are trustees, and he should therefore abstain from making any such inquiry (*i*).

By a statute passed in 1844 extending to deeds, acts, or things executed or done, and to estates, rights, and interests created after the 31st December, 1844, the *bonâ fide* payment to and the receipt of the survivors or survivor of two or more mortgagees was made to effectually discharge the person making the payment, unless the contrary was expressly declared by the instrument creating the trust (*k*). This was afterwards repealed as from the 1st October, 1845 (*l*).

As regards mortgages executed after the 31st December, 1881, to persons not expressed to take in shares, no joint account clause is necessary, and the receipt of the survivors or survivor is a complete discharge notwithstanding notice to the payer of a severance of the joint account (*m*).

If there be no joint account clause or power to the survivor to give receipts, and the mortgage is executed before 1882,

(*h*) *Re Jackson, Smith v. Sibthorpe*, 34 Ch. D. 732; 56 L. J. Ch. 593; 56 L. T. 562; 35 W. R. 646.

(*i*) *Re Harman and Uxbridge & Rickmansworth Rail. Co.*, 24 Ch. D. 720, at p. 726; 52 L. J. Ch. 808;

49 L. T. 130; 31 W. R. 857.

(*k*) 7 & 8 Vict. c. 76, ss. 10, 13.

(*l*) 8 & 9 Vict. c. 106, s. 1.

(*m*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 61.

a purchaser should insist upon the concurrence of the legal personal representatives of the deceased mortgagees, unless satisfactory evidence is produced that the mortgage money was held upon a joint account; and now, where joint mortgagees are trustees, the survivors or survivor can give a receipt whenever the trust was created (*o*).

A mortgagee can, as a rule, convey the legal estate only in the following cases:—

- (1) Where such estate is vested in him.
- (2) Where the mortgagor is entitled to the legal estate, and has given the mortgagee a power of attorney to convey it. This power is revoked by the death of the mortgagor, unless given on or after the 1st January, 1883, and expressed to be irrevocable (*p*), and can only be exercised by the person to whom it is given, unless it expressly or by necessary implication empowers him to appoint another person to do so.
- (3) Where the mortgagor is entitled to the legal estate, and the mortgagee sells under the power contained in Lord Cranworth's Act, 1860. This does not apply to copyholds (*q*). The power contained in this Act even enables a mortgagee by sub-demise to dispose of the whole lease vested in the mortgagor at the time of the mortgage (*r*).
- (4) Where the legal estate having been comprised in the mortgage, the person entitled to receive and give a discharge for the mortgage money, but who has not the legal estate, sells under the power contained in the Conveyancing Act, 1881. This does not apply to copyholds (*s*), nor enable an equitable mortgagee to convey the legal estate vested in the mortgagor (*t*).

(*o*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20, replacing Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 36.

(*p*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.

(*q*) 23 & 24 Vict. c. 145, s. 15; *Re Solomon and Meagher's Contract*, 40 Ch. D. 508; 58 L. J. Ch. 339; 60

L. T. 487; 37 W. R. 331.

(*r*) *Hiatt v. Hillman*, 25 L. T. 55; 19 W. R. 694.

(*s*) 44 & 45 Vict. c. 41, ss. 19, 21 (1).

(*t*) *Re Hodson and Howe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.

Prior to the Conveyancing Act, 1881, a mortgagor, on the one hand, could not make a lease of the mortgaged premises binding on the mortgagee; and on the other hand, a mortgagee could not, except under a power for the purpose given by the mortgagor, grant leases binding on the mortgagor; but now a person in possession of any land, either as mortgagor or mortgagee, under a mortgage made after the 31st December, 1881, can grant leases of the land mortgaged for—(1) an agricultural or occupation lease for any term not exceeding 21 years; (2) a building lease not exceeding 99 years (*u*). Such a lease must reserve the best rent that can reasonably be obtained, and must be made to take effect within one year from its date; no fine must be taken (*x*). There must be inserted in the lease a covenant by the lessee for payment of rent, and a condition of re-entry on the rent not being paid within a time specified, not exceeding 30 days (*y*). A counterpart of the lease must be executed and delivered to the lessee, and, if the lessor is a mortgagor, must be delivered to the mortgagee first in priority within a calendar month after the making of the lease.

The execution of such a lease by the lessor is, in favour of the lessee and all persons claiming under him, sufficient evidence of the execution and delivery of the counterpart to the lessor, and the lessee is not concerned to see that the counterpart is delivered to the mortgagee first in priority (*z*). A contract to make or accept a lease may be enforced against every person on whom the lease, if granted, would be binding (*a*); and all the provisions with regard to a lease extend and apply, as far as circumstances admit, to any letting or to an agreement, whether in writing or not. A building lease must be made in consideration of the lessee having erected, or agreeing to erect, within five years, new or additional buildings, or having improved or repaired buildings, or agreeing within that time to improve or repair buildings,

(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18 (1), (2), (3).
 (*x*) *Ibid.* s. 18 (5), (6).

(*y*) *Ibid.* s. 18 (7).
 (*z*) *Ibid.* s. 18 (8), (11).
 (*a*) *Ibid.* s. 18 (12).

and a peppercorn or other rent less than the rent ultimately payable may be reserved for the first five years or any shorter time (*b*).

All these provisions may be varied or excluded by the mortgage deed or by agreement in writing, and may be applied by such an agreement to mortgages made before the 1st January, 1882 (*c*).

The tenant for life of the equity of redemption has had power, under the Settled Land Acts, since the 1st of January, 1883, where the mortgage was made since 1881, to grant the leases mentioned above (*d*).

It is a long-established principle, and one which still exists notwithstanding the repeal of the usury laws, that the Courts will not permit a person, under the colour of a mortgage, to obtain a collateral advantage not belonging or appurtenant to the contract of mortgage, or, as it is called, to clog the redemption with an agreement; but the Court will, in taking the account in a redemption action, allow to the mortgagee sums actually deducted by him for commissions or bonus at the time of making the advances, provided the deductions were made as part of the mortgage contract under a bargain deliberately entered into by the parties while on equal terms, and knowing perfectly well what they were doing, and without any improper pressure, unfair dealing, or undue influence on the part of the mortgagee, the Court treating the transaction in such case as amounting, in fact, to the payment of the whole amount of the advance to the mortgagor, and the return of a certain part of it to the mortgagee as a consideration for the accommodation (*e*).

Formerly, in consequence of the primary liability of the residuary personal estate of a deceased person to pay his debts, the heir and devisee were entitled to have the realty of the deceased exonerated from any mortgage debt which he

(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18 (9), (10).

(*c*) *Ibid.* s. 18 (13), (14), (16).

(*d*) Settled Land Act, 1882 (45 &

46 Vict. c. 38), s. 6; Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7.

(*e*) *Mainland v. Upjohn*, 41 Ch. D. 126; 58 L. J. Ch. 361; 60 L. T. 614; 37 W. R. 411.

was personally liable to pay ; but where any person has died after the 31st December, 1854, entitled to any freehold or copyhold estate which, at the time of his death, is charged with the payment of any mortgage, and such person has not signified any contrary intention, the heir or devisee takes the land charged with the mortgage debt (*f*) ; and in the case of the will of any person who dies after the 31st December, 1867, a general direction that the testator's debts shall be paid out of his personal estate is not deemed a "contrary intention" (*g*). These provisions were subsequently extended to the leasehold estates of a testator or intestate who dies after the 31st December, 1877 ; and in the case of a person dying after that date, a "contrary intention" is not deemed to be signified by a charge or direction for the payment of debts out of the residuary real and personal estate or residuary real estate (*h*).

See CONSOLIDATION OF MORTGAGES—EQUITABLE
MORTGAGES—TACKING OF MORTGAGES.

Requisitions.

1. *The debt of £ secured by the mortgage of 18 , must be paid off out of the purchase-money, and the mortgagee must join in the conveyance.*

2. *What is due to the mortgagees, and how much of the consideration money is to be applied towards each mortgage?*

3. *The power of sale contained in the mortgage of 1st January, 1860, does not appear to be exercisable by the assigns of the mortgagee. The mortgagor must therefore concur in the conveyance to the purchaser.*

4. *Having regard to the unsatisfactory nature of the power of sale contained in the mortgage, evidence must be furnished to the purchaser showing that some event has happened which authorizes the sale.*

5. *Evidence must be produced showing that some money*

(*f*) 17 & 18 Vict. c. 113, s. 1.

(*h*) 40 & 41 Vict. c. 34, s. 1.

(*g*) 30 & 31 Vict. c. 69, s. 1.

still remains owing upon the security of the mortgage. The power of sale is not such as to make this requisition unnecessary.

6. *How does the mortgagee propose to make a title to the last day of the term? If by exercising the power of attorney contained in the mortgage of 1880, evidence must be produced showing that the mortgagor is still alive.*

7. *The mortgage of , 1880, does not contain a joint account clause. This being so, the legal personal representative of A. B., the deceased mortgagee, must concur in the conveyance to the purchaser. What, if any, portion of the purchase-money is to be received by him?*

8. *The money due on mortgage of the property being expressed in the indenture of , 18 , to be held subject to the trusts of the settlement referred to therein, such settlement must be produced for the inspection of the purchaser's solicitor in order that he may satisfy himself that it contains nothing to prevent the mortgagee giving a receipt, and a statutory acknowledgment of the purchaser's right to production of such settlement must be given.*

9. *What is the date of the settlement by A. B., the mortgagor, of the equity of redemption of the premises included in the mortgage proposed to be transferred by C. D.? If it is subsequent to the indenture of transfer and further charge to C. D., it cannot, of course, affect the title; but if, as would appear, it was prior to such last-mentioned indenture, though subsequent to the original mortgage, A. B. had no power, unless reserved to him in the settlement, to encumber the equity with the further £9,000 by the indenture of July, 18 , and in that case the security offered is to that extent defective.*

MORTMAIN AND CHARITABLE USES.

The subjects of mortmain and charitable uses respectively are in most works dealt with together; there is, however, no necessary connection between a corporation on the one

hand, and a charity on the other hand, and, as dealing together with similar, but distinct, subjects is liable to cause a confusion of ideas, they are hereunder treated separately.

(i) **Mortmain.**

At common law a corporation had power to take and hold land. But since Magna Charta (*i*) restrictions have been imposed with a view to prevent corporations buying land, and thus depriving the feudal lords of the services they would otherwise be entitled to. The Mortmain Acts apply to corporations sole as well as aggregate (*k*), and leaseholds, if for more than ninety-nine years, were said to be within the Acts (*l*). The former Acts on the subject were consolidated by the Mortmain and Charitable Uses Act, 1888 (*m*). This Act provides that if land is assured to a corporation otherwise than under the authority of a licence from the Crown, or of a statute for the time being in force, it shall be forfeited to the Crown or mesne lord (*n*). Land in the Act includes tenements and hereditaments, corporeal and incorporeal, of whatsoever tenure and any estate and interest in land (*o*). This wide definition appears to have the effect of subjecting corporations, as from the 13th of August, 1888, to the further disability of not being able, without licence or statutory authority, to take any estate or interest in lands; but since the 4th August, 1891, this definition has been repealed and replaced by a new one, and land now only includes tenements and hereditaments, corporeal and incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (*p*). Alienations in mortmain are not void but only voidable, and if the Crown and mesne lords waive their rights, the corporation can hold the land.

The following corporations amongst others are authorized by statute to hold land:—(1) Joint stock companies in-

(i) 25 Edw. 1, c. 36.

(k) Viner's Abr. Mortmain (B. 1), p. 614.

(l) *Ibid.*, pp. 20—22.

(m) 51 & 52 Vict. c. 42.

(n) *Ibid.* s. 1.

(o) *Ibid.* s. 10 (iii).

(p) 54 & 55 Vict. c. 73, s. 3.

incorporated under the Companies Acts (*q*); (2) companies incorporated by special Acts containing similar provisions; (3) the Governors of Queen Anne's Bounty (*r*); (4) incorporated charities (*s*).

Corporations holding money in trust for public or charitable purposes may invest money on real security authorized by their trusts without being deemed to have acquired land in mortmain, and no contract for or conveyance of any interest in land made *bond fide* for the purpose only of such security is to be deemed void, but if the equity of redemption of the premises comprised in such security becomes liable to foreclosure or otherwise barred or released, it is thenceforth to be held in trust for sale and to be sold accordingly, and if any decree is made for the redemption or enforcing of the security, it shall direct a sale in default of redemption, and not a foreclosure of such premises (*t*).

Assurances to corporations for the purposes only of public parks, elementary schools, public museums, or dwellings for the working classes, are valid provided they satisfy the statutory requirements as to charitable uses referred to below (*u*).

(ii) Charitable Uses.

The alienation of land for charitable purposes is subject to restrictions which were originally imposed by the Charitable Uses Act, 1735, commonly, but improperly, called the Mortmain Act (*x*), and are now embodied in the Mortmain and Charitable Uses Act, 1888 (*y*), under which statute every assurance of land, with the exceptions referred to hereunder, to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses, must be made in accordance

(*q*) Companies Act, 1862 (25 & 26 Vict. c. 89), s. 6.

(*r*) 2 & 3 Anne, c. 20.

(*s*) 18 & 19 Vict. c. 124, s. 35; 33 & 34 Vict. c. 34.

(*t*) The Charitable Funds Investment Act, 1870 (33 & 34 Vict. c. 34).

(*u*) 51 & 52 Vict. c. 42, s. 6; 53 & 54 Vict. c. 16.

(*x*) 9 Geo. 2, c. 36.

(*y*) 51 & 52 Vict. c. 42.

with the requirements of the Act, and unless so made every such assurance is void (z). Land as used in this Act had the widest possible meaning and included all estates and interests in law, money charged on land, and any personalty savouring of the realty. But this meaning has not been altered, and after the 4th August, 1891, the word is only to include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (a).

The requirements of the Act, so far as relates to land, are that the assurance—

- (1) If of land not being land of copyhold or customary tenure, must be by deed, executed in the presence of at least two witnesses (b), or by registered disposition under the Land Transfer Act, 1875, or any Act amending it (c).
- (2) Unless made in good faith for full and valuable consideration, must be made at least 12 months before the death of the assurator (d).
- (3) Must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof (e).
- (4) Must be without any power of revocation, reservation, condition, or provision for the benefit of the assurator, or of any person claiming under him, except that the instrument may contain any of the following provisions if reserved to the persons claiming under the assurator as well as the assurator himself: (a) the grant or reservation of a peppercorn or other nominal rent; (b) the grant or reservation of mines or minerals; (c) the grant or reservation of any easements; (d) covenants or provisions as to the erection, repair, position, or descriptions of buildings, the formation or repair of streets or roads, drainage or nuisances, and

(z) 51 & 52 Vict. c. 42, s. 2.

(a) 54 & 55 Vict. c. 73, s. 3.

(b) 51 & 52 Vict. c. 42, s. 4 (6).

(c) *Ibid.* s. 9.

(d) *Ibid.* s. 4 (7).

(e) *Ibid.* s. 4 (2).

covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land; (e) a right of re-entry on non-payment of any such rent or on breach of any such covenant or provision; (f) any stipulation of the like nature for the benefit of the assurator, or of any person claiming under him (*f*).

- (5) Must, unless made by registered disposition under the Land Transfer Act, 1875, or any Act amending it, within six months after execution be enrolled in the Central Office of the Supreme Court (*g*).

The above provisions do not apply to—

- (1) Assurances by deed for a public park, elementary school, or public museum made for full and valuable consideration, or executed not less than 12 months before the death of the assurator and enrolled in the books of the Charity Commissioners within six months after the execution of the deed (*h*).
- (2) Assurances by deed to public authorities for purposes for which they are authorized to acquire land (*i*).
- (3) Assurances for certain specified universities, colleges, and societies (*k*).
- (4) Assurances under any statute in force at the time of the passing of the Mortmain and Charitable Uses Act, 1888 (*l*). For a complete list of statutory exemptions from the provisions of the Act of George II. still existing, see Index to the Statutes Revised, title "Mortmain."
- (5) Assurances by deed for the purpose of providing dwellings for the working classes in populous places. The deed must be enrolled with the Charity Commissioners within six months after its execution (*m*).

The conveyance to other trustees or another charity of

(*f*) 51 & 52 Vict. c. 42, s. 4 (3) (4).

(*g*) *Ibid.* ss. 4 (9), 9.

(*h*) *Ibid.* s. 6.

(*i*) 55 & 56 Vict. c. 11.

(*k*) 51 & 52 Vict. c. 42, s. 7.

(*l*) *Ibid.* s. 8.

(*m*) Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16).

land already devoted to charitable purposes does not fall within the Acts relating to charitable uses (*n*).

Lands devised by the will of a testator dying before the 5th August, 1891, were subject to the provision referred to above, which, in effect, prohibited the gift of an interest in land by will to any charitable uses other than assurances to certain specified universities, colleges, and societies, and assurances under any statute in force at the time of the passing of the Mortmain and Charitable Uses Act, 1888 (*o*). Land not exceeding 20 acres for a public park, and not exceeding two acres for a public museum, and not exceeding one acre for a school-house, and (after 24th July, 1890) not exceeding five acres for dwellings for working classes in populous places, was, however, a further exception; but a will containing an assurance of such land must have been executed not less than 12 months before the death of the assurator or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than 12 months before the death of the assurator, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator (*p*).

By the Mortmain and Charitable Uses Act, 1891, land may be devised by the wills of testators dying after the 4th August, 1891, to or for the benefit of any charitable use, but such land must be sold within one year from the death of the testator or such extended period as may be determined by the Court or judge at chambers or by the Charity Commissioners (*q*). The effect of this is to repeal sect. 4 of the Mortmain and Charitable Uses Act, 1888 (*r*), so far as it relates to wills (*s*). As soon as the time limited for the

(*n*) *Walker v. Richardson*, 2 M. & W. 882; M. & H. 251; *Att.-Gen. v. Glyn*, 12 Sim. 84; *Ashton v. Jones*, 3 L. T. 49; 8 W. R. 633; 6 Jur. (N. S.) 970; 28 Beav. 460.

(*o*) 51 & 52 Vict. c. 42, ss. 7, 8.

(*p*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42, s. 6;

53 & 54 Vict. c. 16).

(*q*) Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 5.

(*r*) 51 & 52 Vict. c. 42.

(*s*) *Re Hume, Forbes v. Hume*, (1895) 1 Ch. 422; 64 L. J. Ch. 267; 72 L. T. 68; 43 W. R. 291; 12 R. 101.

sale of any lands under any such assurance has expired without completion of the sale of the land, the land unsold vests forthwith in the official trustee of charity lands, and the Charity Commissioners must take all necessary steps for the sale or completion of the sale of such land, to be effected with all reasonable speed by the administering trustees for the time being (t).

The Court or judge in chambers and the Charity Commissioners have power, if satisfied that land assured by will to or for the benefit of any charitable use or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land is required for actual occupation for the purposes of the charity and not as an investment, to sanction the retention or acquisition, as the case may be, of such land (u).

Requisitions.

1. *Is the X. Society incorporated under any, and, if so, what, statute authorizing corporations registered thereunder to hold lands in mortmain? If not, the vendors must produce the licence from the Crown enabling them so to do.*

2. *How is the consent of the Charity Commissioners to the conveyance to the vendors the B. Hospital trustees shown?*

3. *It does not appear from the abstract that the conveyance to the trustees of A.'s Charity was enrolled in the Central Office. Was this done, and, if so, on what date?*

4. *The certificates of incorporation of the A. B. Co., Ltd., must be produced in order to show that such company was duly registered under the Companies Act, 1862, and, therefore, capable of holding and conveying land.*

5. *The certificate of incorporation under the Building Societies Act, 1874, of the N. P. Building Society should be abstracted in chief and must be produced.*

(t) Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 6.

(u) *Ibid.* s. 8.

NAME AND ARMS CLAUSE.

A name and arms clause, that is to say, a clause intended on the failure of a condition for taking and holding a certain name and arms to defeat an estate and to give the property over to another person, usually operates by means of a shifting use, which, on the failure of a person to whom the estate is given to adopt the name and arms specified, vests the land in the person next entitled.

Clauses of this description are construed strictly, and the limitation for cesser of the former estate and the limitation over must fit in with one another with exactness (*x*). They are generally employed in connection with the settlement of real estate. The usual form is applicable to successive limitations of estates for life and in tail, but not to a gift of the ultimate estate in fee simple, as there could be no person entitled in remainder thereafter to whom the estate could go over; and even apart from this, such a gift over would, in most cases, be void under the rule against perpetuities (*y*).

In the case of an estate tail the limitation over, being in defeasance of such estate, is capable of being barred by a disentailing assurance.

On the sale of his life estate by a person entitled in remainder to an estate subject to a name and arms clause, the purchaser runs a risk of losing the estate by the neglect of the vendor to adopt the name and arms in accordance with the clause; the purchaser is under no liability to adopt them himself, but he should require a bond with sureties to secure the taking of them by the vendor.

Where a name and arms clause requires a devisee to take the testator's surname, the addition by the devisee of such surname before is not, but the addition after his own name is, a compliance with the terms of the bequest (*z*).

(*x*) *Musgrave v. Brooke*, 26 Ch. D. 792; 54 L. J. Ch. 102; 33 W. R. 211.

(*y*) *Re Catt's Trusts*, 33 L. J. Ch. 495; 10 L. T. 409; 12 W. R. 739; 10 Jur. (N. S.) 536; 4 N. R. 88; 2 H. & M. 46; *Bird v. Johnson*, 18

Jur. 976; 2 W. R. 692; 23 L. T. 320; *Musgrave v. Brooke*, 26 Ch. D. 792; 54 L. J. Ch. 102; 33 W. R. 211.

(*z*) *D'Eyncourt v. Gregory*, 1 Ch. D. 441; 45 L. J. Ch. 205; 24 W. R. 424.

NAME AND ARMS CLAUSE—NOTICE.

Requisition.

The life estate contracted to be sold is, it seems, liable to be defeated by the failure of the vendor to adopt the Smith name and arms on the estate falling into possession. The vendor must give security for his doing so, otherwise the purchaser will refuse to complete.

NATURALIZATION.

See ALIENS.

NOTICE.

A purchaser is not, in the case of purchases whenever made in respect of which no action was pending on the 1st January, 1883, prejudicially affected by notice of any instrument, fact, or thing, unless—

- (1) It is within his own knowledge or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
- (2) In the same transaction, with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent (a).

This does not exempt a purchaser from liability under any covenant, condition, provision, or restriction contained in any instrument under which his title is derived (b); but a pur-

(a) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3.

(b) *Ibid.* s. 3 (2).

chaser is not affected by notice in any case where he would not formerly have been so affected (*c*).

A purchaser or lessee having notice of a deed forming part of the chain of title of his vendor or lessor has constructive notice of the contents of such deed, and is not protected from the consequences of not looking at the deed even by the most express representation on the part of the vendor or lessor that it contains no restrictive covenants or anything in any way affecting the title. A person purchasing the fee simple or taking a lease is bound to make reasonable inquiry into his vendor's or lessor's title, and cannot escape notice by neglecting or binding himself not to look into the title, even though the law under an open contract precludes him from doing so (*d*).

Registration is not of itself notice (*e*), but all assurances registered under the Yorkshire Registry Act, 1884 (*f*), have priority according to the date of registration, or, in the case of wills, according to the date of the death of the testator, if the will be registered within six months therefrom.

See COVENANTS—EQUITABLE ESTATES—LENGTH OF TITLE—MORTGAGES—REGISTRATION OF DEEDS AND WILLS—SETTLED LAND.

Requisition.

The purchaser having notice of [the equitable charge for £ executed by the vendor in favour of C. D.], C. D. must join in the conveyance.

(*c*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3 (3); *Re Cousins*, 31 Ch. D. 671; 55 L. J. Ch. 662; 54 L. T. 376; 34 W. R. 393; *Re Hall & Co., Ltd.*, 37 Ch. D. 712; 57 L. J. Ch. 288; 58 L. T. 156; *Bailey v. Barnes*, (1894) 1 Ch. 25;

63 L. J. Ch. 73; 69 L. T. 542; 42 W. R. 66; 7 R. 9.

(*d*) *Patman v. Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.

(*e*) *Morecock v. Dickins*, Amb. 678.

(*f*) 47 & 48 Vict. c. 54.

OPTION.

If a purchaser has notice of an option of purchasing the property contracted to be sold given by the vendor to some other person, he is not bound to complete, as any such option would in such case be binding upon him (*g*); but if he has no such notice and obtains the legal estate he is entitled to hold the property free from the option.

An option to purchase must be confined within the limits allowed by the rule against perpetuities, that is to say, any number of lives in being, and 21 years after the termination of such lives, otherwise it is void (*h*) and may be disregarded by a purchaser.

Requisition.

It appears from the abstract that A. B. has during his life an option of repurchasing the property contracted to be sold. Proof of the death of A. B. without having exercised this option must be furnished, or, if alive, he must join in the conveyance.

ORDER.

The terms of an order for sale must be strictly followed. Therefore, where an order had been made for sale of real estate by public auction, and an attempt had been made to so sell it but had failed, a purchaser under a contract entered into at or after a sale by auction privately held at the judge's chambers was discharged from his contract (*i*); and where an order was made in a partition suit directing inquiries, and that if it should appear that a sale would be more beneficial than a partition, and that all parties interested were parties to the suit or bound by the order, the real estate in question should be sold, and part of the property was subsequently

(*g*) *London and South Western Rail. Co. v. Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.

(*h*) *Ibid.*
(*i*) *Berry v. Gibbons, Ex parte Lee*, L. R. 15 Eq. 150; 42 L. J. Ch. 231.

put up for sale with the sanction of the chief clerk before the certificate was made, the purchaser was held entitled to be discharged from his contract (*j*).

All equitable interests of persons parties to the proceedings in which an order for sale is made, have always been bound by the order; consequently a petition for an order vesting the equity of redemption of property sold in the purchaser was dismissed (*k*); and now, by the Conveyancing Act, 1881 (*l*), an order of the Court under any statutory or other jurisdiction is not, as against a purchaser, to be invalidated on the ground of want of jurisdiction or concurrence, consent, notice or service, whether the purchaser has notice of such want or not (*m*). It appears, however, that this provision does not extend to orders of the County Court (*n*). Notwithstanding these provisions of the Conveyancing Act, it is still a common practice, when an abstract discloses a sale under the Court, to supply a purchaser with information from which he can satisfy himself that all proper persons are parties to the action or otherwise bound by the order for sale; but this does not appear to be necessary (*o*). The persons bound by an order are (1) parties to the action; (2) persons served with notice under Order XVI., Rule 40; (3) persons in respect of whom orders have been obtained under Order XVI., Rules 32 and 46; (4) numerous persons as representing whom one or more persons sue or are sued under Order XVI., Rule 9; (5) *cestuis que trustent* who are represented by their trustees or executors under Order XVI., Rule 8; (6) absent parties where the Court on a compromise so directs under Order XVI., Rule 9A.

Orders of Court are proved by the production of originals or office copies, and the result of a sale under an order is

(*j*) *Powell v. Powell*, L. R. 10 Ch. 130; 44 L. J. Ch. 122; 31 L. T. 737; 23 W. R. 201.

(*k*) *Re Williams' Estate*, 21 L. J. Ch. 437; 5 De G. & S. 515.

(*l*) 44 & 45 Vict. c. 41, s. 70.

(*m*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70 (1).

(*n*) *Re Bowling and Welby's Contract*, (1895) 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 417; 12 R. 218.

(*o*) See *Re Hall-Dare's Contract*, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556.

proved by an office copy of the master's certificate, and the payment in of the purchase-money by an office copy of the Paymaster-General's certificate.

See ACTION—JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF—VESTING DECLARATIONS AND ORDERS.

Requisitions.

1. *A proper abstract of the order of 18 , ordering the C. D. Company to be wound up must be furnished to the purchaser, and an office copy of the order, if in the vendor's possession, should be produced.*

2. *What is the nature of the action of Jones v. Davis? A copy of the statement of claim should be supplied, and the original or an office copy of the order of 18 , for sale produced.*

3. *The order of 18 , appears to have been made in County Court proceedings. Sect. 70 of the Conveyancing Act, 1881, does not, therefore, apply, and the purchaser must be satisfied by a statutory declaration and pedigree or otherwise that all the parties having equitable interests in the property sold were parties to the action or otherwise bound by the order for sale, and that all necessary consents, &c., have been given.*

OUTLAWRY.

See CONVICTS, TRAITORS AND FELONS.

PARCELS.

See IDENTITY.

PARTICULARS OF SALE.

The particulars should be fair and clear, and describe accurately the whole of the property offered for sale. Specific performance of a contract will not be enforced where the defendant has contracted under a mistake to which the plaintiff has even unintentionally contributed (*o*).

The general rule is that the printed or written particulars cannot be contradicted, explained or added to by oral evidence (*p*); but such evidence, though not admissible on behalf of a plaintiff for the purposes of obtaining specific performance with a variation, is admissible in equity on behalf of a defendant for purposes of defence (*q*).

Where the particulars of sale were misleading, but the conditions which were read in the auction room previous to the sale, but which were not printed or circulated among those present, were accurate on the point, and the plaintiff, the purchaser, stated that he was deaf, and did not understand that he was buying an equity of redemption, it was held, on a bill filed by him to have the contract for sale rescinded, that the description of the property being misleading the onus was on the vendor to show that the purchaser was not actually misled; that as he had failed to show this, the plaintiff was entitled to have the contract rescinded and his deposit returned (*r*).

The existence of all easements should be referred to in the particulars. In the absence of such reference, a purchaser without notice thereof will not be compelled to accept the title (*s*).

An untrue statement of a material fact or a false impression purposely conveyed in the particulars will entitle a purchaser to rescind (*t*). Where, therefore, the particulars of a free-

(*o*) *Baskcomb v. Beckwith*, L. R. 8 Eq. 100; 38 L. J. Ch. 536; 20 L. T. 862; 17 W. R. 812.

(*p*) *Higginson v. Clowes*, 15 Ves. jun. 516; 10 R. R. 112.

(*q*) *Woolam v. Hearne*, 7 Ves. jun. 211; 6 R. R. 113; 2 W. & T. 513, and notes thereunder.

(*r*) *Torrance v. Bolton*, L. R. 8 Ch. 118; 42 L. J. Ch. 177; 27 L. T. 738; 21 W. R. 134.

(*s*) *Shackleton v. Sutcliffe*, 12 Jur. 199; 1 De G. & S. 609.

(*t*) *Hill v. Lane*, L. R. 11 Eq. 215; 40 L. J. Ch. 41; 23 L. T. 547; 19 W. R. 194.

hold property described the garden as fenced by a rustic wall with tradesmen's side entrance, whereas the wall did not in fact form part of the property, and the tradesmen's side entrance was used on sufferance, this being known to the vendor, but not disclosed to the purchaser; it was held that the purchaser was entitled to have the contract rescinded notwithstanding a condition providing that mistakes or errors in the description or particulars should not annul the sale, but that compensation should be given (u).

See RESCISSION.

Requisitions.

1. *The particulars described the property as being [state inaccuracy]; this, it appears, is incorrect. The purchaser therefore declines to proceed, and requires the return of his deposit.*

2. *The purchaser has discovered that the property contracted to be sold is subject to a right of way and other easements in favour of the owner of the adjoining premises not described in the particulars of sale. Unless the vendor can procure the concurrence of the owner of the dominant tenement, the contract must be rescinded and the deposit returned.*

3. *The particulars describe the customary rent as l., while according to the abstracted deeds it is l. What allowance does the vendor propose to make off the purchase-money as compensation for this misdescription? It should not be less than 40 years' purchase, i.e., l.*

4. *The dimensions given in the indenture of 18 , are not identical with those stated in the particulars. Which are correct? If the particulars are incorrect, compensation must be allowed to the purchaser.*

(u) *Breuer v. Brown*, 28 Ch. D. 309; 54 L. J. Ch. 605.

PARTITION.

Partition is a mode of putting an end to joint ownership, and may be resorted to either by coparceners, joint tenants, or tenants in common. It may be effected either voluntarily or by the Court or the Board of Agriculture under the Inclosure Acts.

A voluntary partition of freehold or leasehold land effected on or after the 1st January, 1845, is void at law unless made by deed (*x*). The conditions formerly implied on a partition are not implied in any partition made by deed on or after the 1st October, 1845 (*y*). After the 31st December, 1882, a tenant for life, within the meaning of the Settled Land Acts, of an undivided share in land may concur in making partition (*z*).

The Chancery Division of the High Court has power, at the instance of one or more joint owners, whatever be the extent of the applicant's estate, to order a partition without the consent of the remaining joint owners (*a*); but the jurisdiction of the Court is ousted if there be an overriding trust for sale (*b*), though a mere power of sale does not affect it (*c*). The Court has power on ordering a partition to make vesting orders relating to the rights of persons parties to the action and persons claiming under them, whether born or unborn (*d*).

After the 24th June, 1868, the Court, in cases where it might, prior to that date, have ordered a partition, may, on the request of any person interested, if it appear to the Court that a sale would be more beneficial than a partition, order a sale in lieu of partition, and this may be done notwithstanding the dissent or disability of any of the parties interested (*e*); and the Court must order a sale, if so requested by persons interested, to the extent of a moiety or upwards in

(*x*) 7 & 8 Vict. c. 76, s. 3; 8 & 9 Vict. c. 106, s. 3.

(*y*) 8 & 9 Vict. c. 106, s. 4.

(*z*) 45 & 46 Vict. c. 38, s. 3 (iv).

(*a*) *Agar v. Fairfax*, 17 Ves. jun. 533; 1 W. & T. 181.

(*b*) *Biggs v. Peacock*, 22 Ch. D. 284; 52 L. J. Ch. 1; 47 L. T. 341; 31 W. R. 148.

(*c*) *Boyd v. Allen*, 24 Ch. D. 622; 53 L. J. Ch. 701; 48 L. T. 628; 31 W. R. 544.

(*d*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 30; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 31.

(*e*) Partition Act, 1868 (31 & 32 Vict. c. 40), s. 3.

the property to which the action relates (*f*). And in such cases the Court has also power to make vesting orders relating to the rights of persons parties to the action and persons claiming under them (*g*).

See INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

Requisition.

The vendor and C. D., deceased, appear to have held the property contracted to be sold as tenants in common, and not as joint tenants. The agreement of , 189 , for partition not being under seal, either an order for partition must be abstracted and produced, or the legal personal representative of C. D. must join in the conveyance.

PARTNERSHIP.

All property which either originally formed part of or has been added to the common stock of a partnership, is deemed to be personal estate and to be held by the partners as tenants in common; consequently where real property is purchased out of partnership assets, and limited to the grantees as joint tenants (*h*), on the death of one partner the legal estate devolves upon the surviving partners or partner, but in trust so far as necessary for the persons beneficially interested (*i*); a surviving partner can, therefore, it would seem, in the absence of any stipulation in the articles of partnership to the contrary, make a good title to a purchaser and can give a receipt (*k*); but it is usual, if practicable, to obtain the concurrence of the legal personal representative of the deceased partner.

(*f*) 31 & 32 Vict. c. 40, s. 4.

(*g*) 13 & 14 Vict. c. 60, s. 30; 31 & 32 Vict. c. 40, s. 7; 56 & 57 Vict. c. 53, s. 31.

(*h*) *Morris v. Barrett*, 3 Y. & J. 384.

(*i*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 20 (2).

(*k*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20.

Requisitions.

1. *The partnership deed of B. & Co. must be abstracted in chief and produced. How is it proposed to deal with the purchase-money?*

2. *The estates conveyed to A., B., and C. in fee as joint tenants appear to have been treated by them as belonging to the firm of A. and Sons. Under these circumstances the purchaser cannot safely accept a conveyance from C. as survivor. It must be shown who were the members of the firm of A. and Sons at the date of the original conveyance, and which of these members have since retired or died, and who are the present members of the firm.*

PAYMENT INTO COURT.

The payment of purchase or other money into Court is proved by the production of an office copy of the Paymaster-General's certificate.

Requisition.

Payment into Court of the purchase-money in accordance with the conditions of sale must be proved in the usual manner by the production of an office copy of the Paymaster-General's receipt.

PEDIGREE.

In order to prove a pedigree, certificates of birth or baptism, marriage, and death or burial should be required.

Pedigrees are generally readily proved where the possession has gone according to them; the difficulty arises where a person claims as heir under a long pedigree which has no other connection with the title. Such a title should be accepted with caution, for it is often as difficult to point out

a defect in it where there is no contest as it is to defend it where there is (*l*).

See BIRTHS, MARRIAGES AND DEATHS.

Requisition.

What children did the testator A. B. leave? A pedigree should be supplied and verified in the usual way.

PERPETUITIES.

All executory interests in real or leasehold estates, and all contingent remainders of equitable estates, are void, unless they are so limited that they must vest within lives in being at the time of the gift, or 21 years from the decease of the survivor of such lives. Any number of lives may be included, and a child *en ventre sa mere* is a life in being within the meaning of the rule, and instead of the period of 21 years the minority of any person who must be *in esse* at the death of the survivor of the lives may be substituted.

It should be observed that it is not enough that the estates may, and, in fact, do, vest within the period allowed, but they must necessarily so vest within such period.

The rule has no application to estates limited after or in defeasance of an estate tail, such estates being liable to be barred by the tenant in tail.

Estates taking effect under a special power of appointment are treated as if the limitations inserted in the instrument exercising the power had actually been inserted in the original instrument, and are void or valid accordingly (*m*).

Contingent remainders of legal estates are subject to the separate and independent rule that an estate cannot be limited to an unborn person for life followed by an estate to any child of such unborn person (*n*). They are also subject

(*l*) Sug. 418.

(*m*) *Routledge v. Dorril*, 2 Ves. jun. 357; 2 R. R. 250.

(*n*) *Whitby v. Mitchell*, 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337.

to a rule that a contingent remainder limited after a contingent remainder is void, if it infringe the ordinary rule against perpetuities (*o*).

Limitations depending or expectant upon a prior limitation which is void for remoteness are themselves invalid, but limitations in default of appointment under a power which is void for remoteness are not necessarily invalid unless they are themselves obnoxious to the rule against perpetuities (*p*).

Closely allied to the subject of perpetuities is the statutory restriction imposed by the Thellusson Act against the accumulation of income for the whole period, which, under the rule against perpetuities, was possible (*q*). This Act provides that no person shall settle any real or personal property so that the whole or any part shall be accumulated for any longer term than the life of the settlor, or the term of 21 years from his death, or during the minority of any persons living or *en ventre sa mère* at the death of the settlor, or during the minorities of any persons who, if of full age, would be entitled to the income directed to be accumulated. Accumulations directed otherwise are void, and the income, so long as it is directed to be accumulated contrary to the provisions of the Act, goes to the person who would have been entitled if such accumulation had not been directed. The Act does not apply to a provision for payment of debts or raising portions for children of the settlor, or of any person taking an interest under the settlement, or to any direction touching the produce of timber or underwood (*r*). The accumulation of income for the purchase of land only has, after the 27th June, 1892, been further restricted to the minorities of any persons who under the settlement would, if of full age, be entitled to the income accumulated (*s*).

(*o*) *Re Frost, Frost v. Frost*, 43 Ch. D. 246; 59 L. J. Ch. 118; 62 L. T. 25; 38 W. R. 264.

(*p*) *Re Abbott, Peacock v. Frigout*, (1893) 1 Ch. 54; 62 L. J. Ch. 46; 67 L. T. 794; 41 W. R. 154; 3 R. 72.

(*q*) *Thellusson v. Woodford*, 8 R. R. 104; 11 Ves. jun. 112; 1 Bos. & P. (N. R.) 357.

(*r*) The Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98).

(*s*) The Accumulations Act, 1892 (55 & 56 Vict. c. 58).

A direction to accumulate income which is void under the Thellusson Act is not altogether void, but is void only to the extent that the direction to accumulate is excessive (s).

Requisitions.

1. *The devise of Whiteacre contained in B.'s will to the vendor, as "the first son of A. who should attain 22 years," would appear to be void as infringing the rule against perpetuities. Having regard to this, how does the vendor propose to make a title?*

2. *The devise in A.'s will is to his daughter for life and after her death to any husband she may marry for life, and after his death to her eldest son in tail. How does the vendor uphold the validity of this ultimate devise, having regard to the rule laid down in Whitby v. Mitchell (t)?*

PORTIONS.

In perusing an abstract, portions or family charges which create incumbrances on the land must be looked for. If any such are found to exist their release must be obtained, or, if by reason of persons entitled to them being infants or otherwise this cannot be done, advantage should be taken of the provision of the Conveyancing Act, 1881 (u), that where land subject to any incumbrance is sold by or out of Court, the Court may, on the application of any party to the sale, "direct or allow" payment into Court, in case of an annual sum charged on the land or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, will be sufficient, by the dividends, to provide for such charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due

(s) *Griffiths v. Fere*, 9 Ves. jun. 127. (u) 44 & 45 Vict. c. 41, s. 5.

(t) 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337.

thereon, together in either case with such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, and thereupon the Court may, with or without notice to the incumbrancer, declare the land freed from the incumbrance, and make any order for conveyance or vesting order proper for giving effect to the sale (x).

It will be observed that the provisions referred to above apply not only to sales by the Court, but to ordinary sales. The practice is to make applications, under the Act, in Chambers (y); and the order gives the vendor liberty to lodge the necessary amount in Court, and declares that upon such lodgment the land in question will be freed from the charge (z).

See SETTLED LAND.

Requisitions.

1. *By the will of A. B., deceased, the land contracted to be sold is charged with portions for his younger children. What children did he leave? Each of them must concur in the conveyance, or an order must, at the vendor's expense, be obtained under the Conveyancing Act, 1881, sect. 5, freeing the property.*

2. *Has the power contained in the settlement of 18 , to create terms for raising portions been exercised? If so, please give particulars and state what portions have been raised thereunder.*

POSSESSORY TITLES.

It occasionally happens that an anxious purchaser is willing or even contracts to take a possessory title. The purchaser's

(x) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 5. 30 W. R. 244.

(z) Seton, 5th edit. 1589; 44 & 45

(y) *Patching v. Bull*, 46 L. T. 227; Vict. c. 41, s. 5.

solicitors should, under such circumstances, explain to him the objections to such a title, namely, that the 12 years' limit under the Real Property Limitation Act, 1833 (*a*), and the Real Property Limitation Act, 1874 (*b*), only applies as against a person entitled in possession and also *sui juris* when the time began to run (*c*); also, that if an estate is in settlement, time does not begin to run against a remainderman until his estate falls into possession, so that a title may be defective even after 30 years' possession (*d*). If, after this being explained to the purchaser, he still desires or is bound by contract to accept the title, a statutory declaration (*e*) should be obtained proving that the land contracted to be sold has been held by the vendor and his predecessors in title without interruption under the title offered for a number of years, as many as possible above 12, and that no interest has, for at least that period, been paid, or acknowledgment in writing given in respect of any incumbrance, and that no acknowledgment has been given of the title of any other person.

See LIMITATION, STATUTES OF—TITLE, WANT OF.

Requisition.

A statutory declaration, showing that the vendor has for upwards of years been in the full, free, and undisturbed possession of the property contracted to be sold, must be supplied at the vendor's expense.

POWERS OF APPOINTMENT.

See APPOINTMENTS.

(*a*) 3 & 4 Will. 4, c. 42.

(*b*) 37 & 38 Vict. c. 57.

(*c*) *Re Alison, Johnson v. Mounsey*,
11 Ch. D. 284; 40 L. T. 234; 27
W. R. 537.

(*d*) See Sug. 483; *Mills v. Capel*,
L. R. 20 Eq. 692; 44 L. J. Ch. 674;
33 L. T. 158; *Pedder v. Hunt*, 18
Q. B. D. 565; 56 L. J. Q. B. 212;
56 L. T. 687; 35 W. R. 371.

(*e*) Appendix C.

POWERS OF ATTORNEY.

See AGENTS.

POWERS OF SALE.

See MORTGAGES.

PRESCRIPTION.

See EASEMENTS.

PRODUCTION, COVENANTS FOR.

See TITLE DEEDS.

PROTECTION ORDER.

See JUDICIAL SEPARATION AND PROTECTION ORDERS.

PROTECTOR.

See ENTAIL.

PUBLIC HOUSE.

Upon the sale of a public-house as a going concern, time is of the essence of the contract, and the vendor is bound to have a valid and effectual licence existing at the date fixed for completion which he can indorse in the usual way, and upon or in respect of which the purchaser can apply at once

for interim protection under the Licensing Act, 1842 (*f*), at the next special sessions (*g*).

A covenant by the assignor of the lease of a public-house for himself, his executors, administrators, and assigns to purchase from the brewer all beer consumed, though such covenant is not contained in the lease, is binding in equity upon an assignee with notice (*h*).

Where there was a covenant in a lease by a lessee of a public-house that he would not during the term of the lease directly or indirectly buy, sell, or dispose of upon the premises any ales or stout other than such as should have been *bonâ fide* purchased of the lessors, or from them or either of them, either alone or jointly with any other person or persons who might thereafter become a partner or partners with them or either of them, provided they or he should at such time deal in or vend such liquors as aforesaid, and be willing to supply the same to the lessee of good quality and at the fair current market price, it was held, first, upon the construction of the covenant, that the benefit of it was not restricted either to assigns carrying on the same brewer's business as the lessors, or to assigns who themselves made beer; secondly, that the covenant was not a personal covenant incapable of assignment, but a covenant relating to the way in which the business at a particular house was to be carried on, and accordingly a covenant running with the land and enforceable by the owner of the reversion on the lease (*i*).

Where the lessee of a public-house covenanted with his lessor that he, his executors, administrators, or assigns, would not wilfully do or suffer any act or thing which might be a breach of the rules and regulations established by law for the conducting of licensed public-houses, or be a reasonable ground for the withdrawal or withholding all or any of the licences for the sale of beer or ale, wines, and spirituous liquors

(*f*) 5 & 6 Vict. c. 44, s. 1.

(*g*) *Tadcaster Tower Brewery Co. v. Wilson*, (1897) 1 Ch. 705; 66 L. J. Ch. 402; 76 L. T. 459; 45 W. R. 428; 61 J. P. 360.

(*h*) *Luker v. Dennis*, 7 Ch. D. 227; 47 L. J. Ch. 174; 37 L. T. 827; 26 W. R. 167.

(*i*) *Clegg v. Hands*, 44 Ch. D. 503; 59 L. J. Ch. 477; 62 L. T. 502; 38 W. R. 433.

therein, and the lessee assigned the term to the defendants, who underlet the premises, it was held that the term "assign" in the covenant did not include an underlessee, and that the defendants were not liable for a breach of the covenant in respect of offences committed by their underlessee (*k*).

Requisitions.

1. *It is assumed that the vendors will on the day fixed for completion hand over the licence of the hotel duly indorsed to enable the purchaser to apply for interim protection under the Licensing Act, 1842.*

2. *It is understood that the Lion Hotel is a free house, and that the vendor is under no restriction in connection with it.*

PURCHASER.

See VENDOR AND PURCHASER, BANKRUPTCY AND DEATH OF, BEFORE COMPLETION.

QUASI-ENTAIL.

See LIFE ESTATE.

RATES AND TAXES.

Rates and taxes are, in general, apportionable, but it is usual in contracts and conditions of sale to provide expressly for apportionment. The rates and taxes due prior to completion do not, as a rule, affect a purchaser, as, with the exception of the water rate in certain cases mentioned below, they do not constitute a charge upon the property: the subject is, nevertheless, of some importance in connection

(*k*) *Bryant v. Hancock*, (1898) 1 Q. B. 716; 67 L. J. Q. B. 507; 78 L. T. 397; 46 W. R. 386.

with the tenancies of property sold which is let on lease or otherwise, and it may not, therefore, be out of place to give a short statement relating to rates and taxes most commonly payable.

Poor Rate.—This rate, originated by the Poor Relief Act, 1601 (*l*), is a personal liability of the occupier of lands. Provision is made by the Poor Rate Assessment and Collection Act, 1869 (*m*), for apportioning the rate between successive occupiers. The owner may be rated in certain cases (*n*). Unoccupied houses are not liable.

General District Rate.—This rate is levied under the provisions of the Public Health Act, 1875 (*o*). It is, in general, payable by the occupier, though the owner may be rated in certain cases (*p*). The Act contains provisions for apportioning the rate between successive occupiers (*q*). Unoccupied houses are not liable.

Highway Rate.—This rate is levied under the Highway Act, 1835 (*r*), as amended by the Highway Act, 1862 (*s*), the Highway Act, 1864 (*t*), and the Highway Rate Assessment and Expenditure Act, 1882 (*u*). The occupier is, in general, liable to pay it. The rate is collected in the same way as the poor rate, but the owner may be rated in certain cases (*x*).

A highway rate may also in certain cases be levied under the Public Health Act, 1875 (*y*).

Private Improvement Rate.—This rate is levied under the provisions of the Public Health Act, 1875 (*z*). It is payable by the occupier, who is permitted, apart from special contract, to deduct three-fourths of the amount from his rent, if it be a rack-rent, and, if less than rack-rent, he may deduct such proportion of three-fourths of the rate as his rent bears to a rack-rent (*a*).

(*l*) 43 Eliz. c. 2.

(*m*) 32 & 33 Vict. c. 41, s. 16.

(*n*) 32 & 33 Vict. c. 41.

(*o*) 38 & 39 Vict. c. 55, ss. 209—212.

(*p*) *Ibid.* s. 211 (1).

(*q*) *Ibid.* s. 211 (3).

(*r*) 5 & 6 Will. 4, c. 50.

(*s*) 25 & 26 Vict. c. 61.

(*t*) 27 & 28 Vict. c. 101.

(*u*) 45 & 46 Vict. c. 27.

(*x*) *Ibid.* s. 3.

(*y*) 38 & 39 Vict. c. 55, ss. 216 and 217.

(*z*) *Ibid.* ss. 213—215.

(*a*) *Ibid.* s. 214.

Lighting Rate.—This rate may in certain cases be levied under the Lighting and Watching Act, 1833 (*b*). It falls upon the occupier.

Watch Rate.—This rate may in certain cases be levied in boroughs under the provisions of the Municipal Corporations Act, 1882 (*c*).

Sewers Rate.—This rate may be levied under the provisions of the Sewers Act, 1841 (*d*). It is collected from the occupier, who may, apart from agreement, deduct the amount paid from the rent.

County Rates.—These rates, which are payable by the occupier, are regulated by the County Rate Act, 1852 (*e*), the County Rate Act, 1858 (*f*), and the County Rate Act, 1866 (*g*).

Water Rate.—This rate is in general payable by the occupier, but the Waterworks Clauses Act, 1847 (*h*), makes the owners of all dwelling-houses, the annual value of which does not exceed 10%, liable to the payment instead of the occupier. The private Act incorporating a water company may also make the owner liable instead of the occupier, where the rent amounts to a greater sum than 10%, *e. g.*, the East London Waterworks Act, 1853 (*i*), makes the owner and not the occupier liable where the rent does not exceed 20%. In all cases where the owner and not the occupier is liable by law or agreement with the company to the payment of the water rate in respect of any dwelling-house, such water rate and interest is a charge on the dwelling-house in priority to all other charges affecting the premises, and the amount may be recovered with costs from the owner or the occupier for the time being; but no proceedings can be taken against the occupier until after notice, and no greater sum than the rent due can be recovered from the occupier, who is permitted to

(*b*) 3 & 4 Will. 4, c. 90.

(*c*) 45 & 46 Vict. c. 50, ss. 197—
200.

(*d*) 4 & 5 Vict. c. 45.

(*e*) 15 & 16 Vict. c. 81.

(*f*) 21 & 22 Vict. c. 33.

(*g*) 29 & 30 Vict. c. 78.

(*h*) 10 & 11 Vict. c. 17, s. 72.

(*i*) 16 & 17 Vict. c. clxvi. s. 81.

deduct the amount paid from his rent (*k*). The effect of this is, that not only is the amount due for arrears a charge upon the premises, but a purchaser of the freehold is liable to a personal action at the suit of the waterworks company to recover such arrears (*l*).

Metropolitan Gas Rate.—This rate is payable by the occupier, and is regulated by the Metropolitan Gas Act, 1860 (*m*).

The Queen's Taxes consist of land tax and property tax, Schedule A.; property tax, Schedule B. (*n*), inhabited house duty (*o*). The only one of these taxes calling for special mention is the property tax, Schedule A. This tax is paid by the tenant, who may deduct it from his rent, even although his lease may contain an express covenant by him to pay it; and tenants who are called upon to pay arrears due from former occupiers may also deduct the sum so paid (*p*).

Apart from a covenant to pay rates and taxes, the tenant may deduct from his rent—

- (1) Three fourths of private improvement rate.
- (2.) Sewers rate.
- (3.) Land tax.
- (4.) Property tax, Schedule A.

A covenant to pay all rates, taxes, and assessments includes land tax and sewers rates (*q*); but a covenant by a tenant to pay "all rates, taxes, and assessments whatsoever, which now are or during the term shall be imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax," does not include expenses of paving, &c. recovered in a summary manner under the Public Health Act,

(*k*) The Water Companies' Regulation of Powers Act, 1887 (50 & 51 Vict. c. 21), s. 4.

(*l*) *East London Waterworks Co. v. Kellerman*, (1892) 2 Q. B. 72; 67 L. T. 319; 56 J. P. 773.

(*m*) 23 & 24 Vict. c. 125.

(*n*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), as amended by Income Tax Act, 1853 (16 & 17 Vict. c. 34).

(*o*) House Tax Act, 1851 (14 & 15 Vict. c. 36).

(*p*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 60 and 103; Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 35; and the Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 15.

(*q*) *Amfield v. White*, 27 R. R. 745; *By. & M.* 246; *Manning v. Lunn*, 2 G. & K. 13.

1875 (r). And where the agreement is for the tenant to pay all taxes, parochial and parliamentary, he is not bound to pay the sewers rate (s).

See LAND TAX—STREET IMPROVEMENTS.

Requisitions.

1. *The last receipt for all rates and taxes payable in respect of the property sold must be produced. An apportionment must be made of the accruing rates and taxes, and the vendor must pay the amount attributable to the period before the date fixed for completion.*

2. *The purchaser will require the last receipt for water rate to be produced on completion.*

3. *Is there any private improvement rate payable in respect of the property sold?*

RECEIPT.

See CONSIDERATION.

RECITALS.

See ESTOPPEL.

RECONVEYANCE.

As soon as the amount secured by a mortgage (that is to say, the principal and interest and mortgagee's costs, charges, and expenses) has been discharged, the mortgagor is entitled to a reconveyance of the legal estate if vested in the mort-

(r) 38 & 39 Vict. c. 55, s. 150; (s) *Palmer v. Earith*, 14 L. J. Ex. 256; 14 M. & W. 428.
Baylis v. Jiggins, (1898) 2 Q. B. 315; 67 L. J. Q. B. 793.

gagee. If there is no legal estate vested in the mortgagee, the interest of the mortgagee determines as soon as the amount secured has been discharged, and no reconveyance is necessary.

In the case of copyholds mortgaged only by means of a covenant to surrender, a mere receipt for the mortgage money is all that is required to vacate the mortgage; and if they be mortgaged by means of a conditional surrender and the mortgagee has not been admitted, an entry on the court rolls of a memorandum of satisfaction is sufficient to make void such conditional surrender. If, however, the mortgagee has been admitted, he must re-surrender to the use of the mortgagor, who must again be admitted as tenant on the rolls.

In the case of a mortgage by demise of a term, as soon as the mortgage money has been paid off the term becomes satisfied within the meaning of the Satisfied Terms Act, 1845 (*u*), and no reconveyance is necessary.

Where a mortgage has been made to a building or friendly society, a mere receipt for the mortgage money is sufficient to revest the estate in the person entitled to the equity of redemption (*x*); and a reconveyance by a building society is exempt from stamp duty (*y*). The right to exemption is not lost by reason of the trustees, for the purposes of the dissolution of a society, being joined as parties to the reconveyance (*z*).

Where the money due upon a mortgage has been paid to the mortgagee, but no reconveyance has been executed, the mortgagor becomes, from the date of such payment, a tenant at will to the mortgagee, and the legal estate of the mortgagee is extinguished by 13 years' adverse possession of the mortgagor (*a*).

(*u*) 8 & 9 Vict. c. 112.

(*x*) Building Societies Act, 1874 (37 & 38 Vict. c. 42, s. 42); 6 & 7 Will. 4, c. 32, s. 5; Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 53 (1); 38 & 39 Vict. c. 60, s. 16 (7).

(*y*) 37 & 38 Vict. c. 42, s. 41; 6 & 7 Will. 4, c. 32, s. 37.

(*z*) *The Old Battersea and District Building Society v. The Commissioners of Inland Revenue*, (1898) 2 Q. B. 294; 67 L. J. Q. B. 696; 78 L. T. 746.

(*a*) *Sands to Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397; Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25.

Any person who has any interest, however slight, in the mortgaged property is entitled to pay off the mortgage and call for a conveyance, and this right is not confined to persons claiming under the mortgagor, and even a person who has acquired a statutory title by possession may exercise it (b).

A mortgagor or incumbrancer on redeeming may now, whenever the mortgage was executed, notwithstanding any stipulation to the contrary, require the mortgagee to transfer the mortgage to a third person (c).

See BUILDING SOCIETIES—FRIENDLY SOCIETIES.

Requisitions.

1. *On the payment off of the mortgage money secured on the Whiteacre Farm no reconveyance appears to have been executed. The mortgagee must be a party to the conveyance to the purchaser so as to pass the legal estate vested in him.*

2. *As no reconveyance of Blackacre has ever been executed, and as the mortgage money was paid off within 13 years from the present time, the vendor must deliver a further abstract showing in whom the legal estate in the premises is now vested, and such person must concur in the conveyance to the purchaser.*

RECOVERIES.

See FINES AND RECOVERIES.

RE-ENTRY.

See LEASEHOLD PROPERTY.

(b) *Fletcher v. Bird*, Fisher on Mortgages, 5th edit. para. 2060.

(c) The Conveyancing Act, 1881

(44 & 45 Vict. c. 41), s. 15, as amended by the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 12.

REGISTRATION OF DEEDS AND WILLS.

(i) Middlesex.

The Middlesex Registry Act, 1708 (*d*), provides for the registration of all deeds, conveyances, and wills whereby any hereditaments in the county of Middlesex may be in any way affected. It is to be observed that only deeds, conveyances, and wills require registration, and where there is merely an equitable mortgage created by deposit of title deeds there is no instrument to register.

A purchaser for value who has notice of a prior unregistered assurance cannot obtain priority to such unregistered assurance by registering his own deed first. In such a case the latter purchaser is compelled to hold the legal estate he has thus acquired as trustee for the former purchaser (*e*); but the mere entry on the register does not itself constitute notice, and a mortgagee who obtains the legal estate will not lose his priority in consequence of a prior registered equitable incumbrance of which he had no notice when he advanced his money (*f*).

In the case of a will, a devisee has six months from the death of a testator dying within Great Britain, and three years from the death of one dying at sea or beyond the seas, within which to register the will. If the will be not registered within the prescribed time, an assurance for value from the heir-at-law takes priority over an assurance from the devisee. The doctrine of notice applies in this case as well as in the case of deeds, and a purchaser having notice of a will cannot gain priority over the devisees by registering a conveyance from the heir-at-law, but is considered a trustee for the devisees.

The Act does not extend to copyhold estates, or to any leases at a rack-rent, or to any lease not exceeding 21 years where the actual possession and occupation goes along with

(*d*) 7 Anne, c. 20.

(*e*) *Le Neve v. Le Neve*, 1 Ves. sen. 64; 3 Atk. 646; Amb. 436; 2 W. &

T. 175.

(*f*) *Bedford v. Backhouse*, 2 Eq. Abr. 615; Kelynge, 5.

the lease, or to any of the chambers in Serjeant's Inn, the Inns of Court or Inns of Chancery (*g*), nor to lands in the City of London.

(ii) **Yorkshire.**

The registration of instruments relating to lands in Yorkshire was originally provided for by various statutes during the first half of the 18th century (*h*). Such statutes are now repealed and consolidated by the Yorkshire Registries Act, 1884 (*i*). The equitable rules with regard to notice, which, as stated above, still apply to lands in Middlesex, prevailed up to the 31st December, 1884, under the repealed statutes.

All assurances registered under the Act of 1884 have priorities according to the date of registration, and every will entitled to be registered under the Act has priority according to the date of the death of the testator if registered within six months, or, if not so registered, according to the date of registration. All priorities given by the Act have full effect except in case of fraud, and no persons claiming any legal or equitable interest by priority of registration lose such priority in consequence of their having been affected with actual or constructive notice (*k*).

Notice of a will may be registered in cases where the devisees are unable to register the will within six months, and in such cases the subsequent registration of the will may take place within two years of the testator's death, and the date of the registration of the notice is deemed to be the date of registration of the will (*l*).

The tacking of mortgages, which, after having been abolished as regards lands generally by the Vendor and Purchaser Act, 1874 (*m*), had been re-introduced by the Land Transfer Act, 1875 (*n*), was, by the Yorkshire Registry Act, 1884, abolished as regards lands in Yorkshire (*o*).

(*g*) 7 Anne, c. 20, s. 17.

(*h*) 2 & 3 Anne, c. 4; 6 Anne, c. 20; 6 Anne, c. 62; and 8 Geo. 2, c. 6.

(*i*) 47 & 48 Vict. c. 54.

(*k*) *Ibid.* s. 14.

(*l*) *Ibid.* s. 11.

(*m*) 37 & 38 Vict. c. 78, s. 7.

(*n*) 38 & 39 Vict. c. 87, s. 129.

(*o*) 47 & 48 Vict. c. 54, s. 16.

Unlike the Middlesex Act, the Yorkshire Acts apply to equitable mortgages, but they do not apply to lands of copyhold tenure or to leases not exceeding twenty-one years.

(iii) **As to both Middlesex and Yorkshire.**

Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law, an assurance of such land to a purchaser or mortgagee by the devisee, or by some one deriving title under him if registered before, takes precedence of any assurance from the testator's heir-at-law (*p*).

The Middlesex and Yorkshire Registry Acts do not apply to lands registered under the Land Transfer Act, 1875 (*q*), but do apply to estates and interests excepted from the effect of registration under a possessory or qualified title, and to the unregistered reversion on a registered leasehold title, and to dealings with incumbrances created prior to the registration of the land (*r*).

(iv) **The Bedford Level.**

Assurances relating to land situate in the district known as the Bedford Level require registration in the Bedford Level office (*s*) ; but even if not so registered they are valid for all purposes except for entitling the grantees to the privileges conferred by the Act (*t*).

Requisition.

No memorandum of the registration in Middlesex [Yorkshire] of the conveyance to the vendor is abstracted. Has this deed been registered? If it has, what is the reference? If not, it must be at once registered at the vendor's expense.

(*p*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 8.
 (*q*) 38 & 39 Vict. c. 87, s. 127.
 (*r*) Land Transfer Act, 1897 (60 &

61 Vict. c. 65), Sched. 1.

(*s*) 15 Car. 2, c. 17, s. 8.

(*t*) *Willis v. Brown*, 8 L. J. Ch.

321 ; 10 Sim. 127.

RELEASE.

A release is a discharge or conveyance of a man's right in lands or tenements to a person who has already an estate therein. It can only be made by deed. A joint tenant or coparcener may release his undivided share to his or her co-owner; but as tenants in common hold separate shares they cannot release to one another. A reversion or remainder or any other expectant estate may be released, as also may such rights as easements, profits *à prendre*, and rentcharges.

The old form of conveyance by lease and release is still occasionally met with in the perusal of abstracts. The lease consists of a bargain and sale for a year of the property proposed to be conveyed, expressed to be for a nominal consideration paid by the bargainee to the bargainor. The effect of this was to transfer the use, and this, under the Statute of Uses (*u*), passed the legal estate to the bargainee for one year, and enabled the bargainor to subsequently release to the bargainee, thus obviating the necessity of livery of seisin. The lease was required by the Statute of Frauds to be in writing (*v*), but prior to the 1st January, 1845, there was no necessity for its being by deed. Since that date, however, a deed has been necessary for the lease (*x*), as it always has been for the release.

The release usually contained a recital of the lease, and such a recital contained in a release executed before the 15th May, 1841, is conclusive evidence that the lease was made and executed (*x*). A new kind of conveyance was introduced by a statute passed in 1841. It consisted of a release expressed to be made in pursuance of that Act (*y*), and operated at law and in equity in all respects as if the releasing parties had executed the usual lease for a year, although no such deed was in fact executed. The Act

(*u*) 27 Hen. 8, c. 10.
(*v*) 29 Car. 2, c. 3.

(*x*) 7 & 8 Vict. c. 76, s. 4; 8 & 9
Vict. c. 106, s. 3.
(*y*) 4 & 5 Vict. c. 21.

applied to all releases executed on or after 15th May, 1841, and before the 7th August, 1874, when it was repealed (z).

Another form of conveyance which it is convenient to mention here was introduced by "An Act to Simplify the Transfer of Property" (a); by such Act every person or corporation was enabled to convey by deed, without livery of seisin, or enrolment, or a prior lease, all such freehold land as he might, before the passing of the Act, convey by lease or release. It was only in operation from the 1st January, 1845, until the 30th September of the same year, when the Real Property Act, 1845, provided that all corporeal hereditaments should, as regards the immediate freehold thereof, be deemed to lie in grant as well as livery (b).

Requisitions.

1. *The release, dated the 1st May, 1841, does not contain a recital of the lease upon which it was intended to have been founded. Was any such lease ever executed?*

2. *The release, dated 1843, is not expressed to be made in pursuance of the statute 4 & 5 Vict. c. 21, and could not, therefore, operate under that Act. Was any lease ever executed upon which such release was founded?*

3. *Although the release of 1843 was not founded on a lease for a year, and was not expressed to be made in pursuance of the statute 4 & 5 Vict. c. 21, unless some acknowledgment of the right of the releasor has been given the vendor would appear to have acquired a statutory title. A statutory declaration must be made proving that no such acknowledgment has been given.*

REMAINDERS.

See CONTINGENT REMAINDERS.

(z) Statute Law Revision Act
(No. 2), 1874 (37 & 38 Vict. c. 96).

(a) 7 & 8 Vict. c. 76, s. 2.
(b) 8 & 9 Vict. c. 106, ss. 1, 2.

REMOTENESS OF LIMITATION.

See PERPETUITIES.

RENT.

See APPORTIONMENT—LIMITATION, STATUTES OF.

RENTCHARGES.

See ANNUITIES AND RENTCHARGES.

RESCISSION.

Misrepresentation by a vendor which is fraudulent, or the fraudulent concealment of a material fact which a purchaser has no means of knowing, is a ground for rescission of a contract for sale of real estate, even after completion (c). It is not necessary, in order to have an executory contract set aside on the ground of misrepresentation, to prove that the party who obtained the contract knew at the time the representation was made that it was false (d).

Where a contract contains a condition that if any requisition is persisted in the vendor may rescind, and that if any mistake shall appear to have been made in the description of the property or of the vendor's interest in it, such mistake shall not vitiate the sale, but compensation shall be given, the vendor has a right to rescind on an objection being persisted in, and specific performance with compensation will not be ordered (e); but where, fraud being absent, such a contract is executed and it is too late to obtain rescission, a

(c) *Edwards v. McLeay*, 14 R. R. 261; G. Coop. 312; 2 Sw. 287.

(d) *Reese River Silver Mining Co. v. Smith*, L. R. 4 H. L. 64; 39 L. J. Ch. 849; 17 W. R. 1042; *Redgrave*

v. Hurd, 20 Ch. D. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30 W. R. 251.

(e) *Mawson v. Fletcher*, L. R. 6 Ch. 91; 40 L. J. Ch. 131; 23 L. T. 545; 19 W. R. 141.

condition for compensation will still be enforceable, unless so expressed as to be limited to defects discovered before the conveyance (*f*).

A vendor cannot rescind under a condition for rescission if the purchaser who has taken objection waives it promptly on being informed of the inability of the vendor to comply with it (*g*).

Where property is sold subject to a condition empowering the vendor by notice to rescind the sale if any objection should be insisted on which the vendor is unable or unwilling to remove, and the purchaser insists on an objection (such as misrepresentation, which the Court finds did not exist), it is not too late for the vendor to give notice of rescission immediately after the writ has been issued in an action by the purchaser, and it makes no difference that the power to rescind is not by the condition expressed to arise, notwithstanding any intermediate litigation (*h*). A vendor must, in order to annul a contract on the ground of unwillingness, show some reasonable ground for such unwillingness. He cannot annul the contract, *brevi manu*, without attempting to answer any of the requisitions made by the purchaser (*g*). The right to rescind under such a condition may be lost by waiver or acquiescence in the contract; therefore, in replying to such a requisition, the vendor's solicitor should take care to expressly reserve the right of the vendor under the condition.

The usual condition for rescission does not enable a vendor to rescind the contract in a case where he fails to show any title whatever (*i*), nor where the purchaser merely insists upon an incumbrance being discharged.

(*f*) *Clayton v. Leech*, 41 Ch. D. 103; 61 L. T. 69; 37 W. R. 663.

(*g*) *Duddell v. Simpson*, L. R. 2 Ch. 102; 36 L. J. Ch. 70; 15 L. T. 305; 15 W. R. 115.

(*h*) *Isaacs v. Towell*, (1898) 2 Ch. 285; 67 L. J. Ch. 508; 78 L. T. 619.

(*i*) *Bowman v. Hyland*, 8 Ch. D. 588; 47 L. J. Ch. 581; 39 L. T. 90; 26 W. R. 877.

RESTRAINT ON ANTICIPATION.

See ANTICIPATION, RESTRAINT AGAINST.

RESTRICTIONS AS TO USER OF LAND.

Apart from covenants entered into by lessor or lessee, the rules relating to which stand on an altogether different footing, a restriction as to user of land may arise—(1) by an agreement entered into by an owner of land; (2) by purchasing with notice of such an agreement entered into by a former owner; (3) by statute.

The burden of an affirmative covenant, that is to say, a covenant to do some act, such as to build a wall, never runs with the land, and a purchaser even with notice will not be bound by it (*k*). But where a purchaser takes land in respect of which a restrictive covenant of a negative description has been entered into by a former owner, he is bound by it in equity unless he obtains the legal estate for value without notice (*l*). Cases of this description frequently arise in relation to building estates where the vendor has sold plots to different persons, and if the restrictions were meant for the benefit not only of the vendor but for the common advantage of the several purchasers, any of such purchasers and their assigns can enforce them *inter se* for their own benefit (*m*).

Where a vendor puts up building land for sale in lots subject to restrictive covenants, it is a question of fact to be deduced from all the circumstances of the case whether the restrictions are merely matters of agreement between him

(*k*) *Haywood v. Brunswick Permanent Building Society*, 8 Q. B. D. 403; 51 L. J. Q. B. 73; 45 L. T. 699; 30 W. R. 299; 46 J. P. 356.

(*l*) *Tulk v. Moxhay*, 18 L. J. Ch. 83; 13 L. T. (O. S.) 21; 13 Jur. 89; 2 Ph. 774; 1 H. & Tw. 105; *London*

and South Western Rail. Co. v. Gomm, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.

(*m*) *Collins v. Castle*, 36 Ch. D. 243; 57 L. J. Ch. 76; 57 L. T. 764; 36 W. R. 300.

and his purchasers imposed for his own benefit and protection, or are meant by him, and understood by the buyers, to be for the common advantage of the several purchasers; and the retainer by the vendor of some part of the property is only an element, though an important one, to be taken into consideration with other circumstances in ascertaining the intention; for though the vendor may not part with his whole estate, there may be circumstances which show that the intention was that each purchaser should be entitled to enforce the restriction against the vendor himself as well as against purchasers. Where, therefore, a land company put up freehold building sites for sale by auction in lots, subject to particulars and conditions of sale which, in the view of the Court, constituted an invitation to the public to come in and purchase on the footing that the whole of the property offered for sale was to be bound by one general law affecting the character of the buildings to be erected thereon, and at the auction some of the lots were sold and some were not, and after the sale the vendors claimed the right to sell the unsold lots free from the restrictive covenants in case they desired to do so; it was held that a purchaser who had bought one of the lots sold at the auction, but had not completed his purchase, was entitled to the benefit of a contract by the vendors, implied in the conditions of sale, that the vendors would, as to the lots unsold at the auction, observe stipulations similar to those which the purchasers of those lots, had they been sold, would have been bound to covenant to observe; and it was held also that the purchaser was entitled to have such obligations of the vendors expressed in the conveyance to him of his lot (o).

Where, however, the subsequent acts of the person entitled to the benefit of the restriction, or of those claiming under him, have so altered the character and condition of the adjoining lands, that with reference to the land conveyed the

(o) *Re Birmingham and District Land Co. and Allday*, (1893) 1 Ch. 342; 62 L. J. Ch. 90; 67 L. T. 850; 41 W. R. 189; 3 R. 84.

restriction ceases to be applicable, the Court will no longer enforce it (*p*).

As a general rule, a purchaser of property sold without the particulars disclosing restrictive covenants, is not bound to accept the title if the property is found to be subject to such covenants (*q*).

See COVENANTS.

Requisitions.

1. *It would appear that the premises contracted to be sold formed part of a building estate. Although no restrictive covenants appear on the title deduced, yet, having regard to the shortness of the title offered to the purchaser, he should be satisfied that the building scheme did not in fact embrace any mutual covenants between the purchasers of the various lots.*

2. *Some of the lots put up for sale by auction were not sold. The vendor must observe the stipulations as to the user of the unsold lots which would have been binding upon a purchaser of those lots, and must not sell, mortgage, or lease them otherwise than subject to such stipulations. The purchaser will require these obligations of the vendor to be expressed in the conveyance.*

3. *The purchaser claims to be entitled to repudiate his contract to purchase on the ground that the restrictions on the user of the property were not disclosed in the particulars. Without prejudice to his right to rescind, he is, however, prepared to consider an offer by the vendor of an abatement in the purchase-money as compensation.*

(*p*) *Duke of Bedford v. Trustees of the British Museum*, 2 L. J. Ch. 129; 2 My. & K. 552; *Sayers v. Collyer*, 28 Ch. D. 103; 54 L. J. Ch. 1; 51 L. T. 723; 33 W. R. 91; 49 J. P.

244.

(*q*) *Re Higgins and Hitchman's Contract*, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; *Ellis v. Rogers*, 29 Ch. D. 661; 53 L. T. 377.

REVERSIONARY INTERESTS.

On a purchase of a reversionary interest in personalty the purchaser is entitled to an abstract of the wills, deeds, and other documents relating to the title, as on a purchase of real estate, and the abstract must in all cases commence with the document creating the interest dealt with.

The purchaser or mortgagee of a reversionary interest created by will, of which the trustees are also executors, should inquire of the trustees whether the testator's funeral and testamentary expenses, debts, and pecuniary legacies have been paid; and should also, in all cases where legacy duty is payable, ascertain whether or not it has been paid.

Before a purchase or loan on the security of a reversionary interest, inquiry should be made of the trustees whether they or, so far as they are aware, their predecessors, have received notice of any bankruptcy, assignment, or other dealing with the interest of the beneficiary, and their reply should be obtained in writing. The purchaser or mortgagee should also have an admission in writing by the trustees that they hold the property upon the trusts shown in the abstract, and that they claim no lien for costs or otherwise: it is most important to obtain this from the trustees, but it must be remembered that they are under no legal obligation to furnish it (r). Notice in writing of the assignment or other dealing with the interest must be given to all the trustees.

Where any part of the reversionary funds being dealt with consists of stocks or shares, a *distringas* should be obtained; and where any part consists of a fund in Court a stop order must be obtained, as priority in respect of such funds depends upon the date of the stop order, and not upon the date of notice to the trustees.

See DISTRINGAS AND STOP ORDER—EXPECTANT HEIRS.

(r) *Low v. Bouverie*, (1891) 3 Ch. 82; 60 L. J. Ch. 594; 65 L. T. 533; 40 W. R. 50.

Requisitions.

1. *What children did the testator A. B. leave? Evidence of this and of the identity of Mrs. B. as his widow, and of Mrs. C. as one of his children, must be given.*

2. *At what sum was the testator's personal estate sworn for purposes of probate? The probate must be produced.*

3. *The receipt for legacy duty on the Great Northern Debenture Stock must be produced.*

4. *Has the testator's real estate been sold, and, if so, what sum did it realize?*

5. *Have the testator's debts and funeral expenses and the legacies given by his will been paid?*

6. *Of what do the trust funds now consist?*

7. *The appointment of the present trustees of the will must be duly verified, and copies or abstracts of the documents showing their title must be supplied.*

8. *The proposed mortgagor's solicitors must supply a statement in writing by the trustees of the will to the effect that they have no notice of any dealing with the widow's life estate, or with Mrs. C.'s interest in the funds.*

9. *The trustees of the will must state in writing that they have not received notice of any receiving order, bankruptcy, or other circumstances which could prevent Mrs. B. or Mrs. C. dealing with their respective interests in the property, and that they personally have no claim for costs or other lien on the trust funds.*

10. *The trustees of the will must give an authority to enable the proposed mortgagee to inquire whether the funds are free from distringas in the books of the companies or bodies with whom the same are invested.*

11. *The trustees' admission that they hold the trust fund upon the trusts declared by A. B.'s settlement must be furnished to the purchaser.*

12. *The age of Mrs. X., the tenant for life, must be proved by certificate in the usual way.*

13. *Was notice of the assignment of 18 , to the vendor duly given to the executors and trustees of A. B.'s will ?*

14. *A statutory declaration must be made by the vendor proving that he has not been bankrupt, nor assigned, charged, or otherwise dealt with the interest contracted to be sold.*

15. *The fund appears to be subject to a distringas [stop order] in favour of A. B. The vendors must at their own expense show A. B.'s title, and his claim must be satisfied before completion.*

RIGHT OF WAY.

See EASEMENTS AND PROFITS À PRENDRE.

ROOT OF TITLE.

The commencement of title is, in cases where a contract or conditions of sale exist, almost invariably the subject of a special stipulation which precludes any objection or requisition being made by the purchaser as to the document offered as the root of title.

Apart from contract, a purchaser has no right to the production or to any abstract or copy of any deed, will, or other document dated or made before the time prescribed by law or stipulated for the commencement of title, even though such document creates a power subsequently exercised by an instrument abstracted; and he may make no requisition or objection in respect of the title prior to that time or in respect of any such document, notwithstanding that it is recited or covenanted to be produced. He must likewise assume, unless the contrary appears, that all recitals in the abstracted instruments or documents forming part of the prior title are correct, and give all the material contents of such documents, and that such recited documents were duly executed and

perfected (*s*) ; notwithstanding this, or even an express stipulation precluding objection to the prior title, where the purchaser discovers, either from recitals in abstracted documents or from information *aliunde*, any defect in the vendor's title which the latter is unwilling or unable to remedy, a Court of Equity will not assist the vendor by ordering specific performance, but will leave the plaintiff to his remedy at law. On the other hand, the purchaser being bound by the condition cannot recover his deposit (*t*).

The first document appearing in an abstract should deal with the entire legal and equitable estates, or, at all events, should afford satisfactory evidence relating to both. This is often of great importance where the length of title is restricted, as it commonly is, by condition.

In case of freeholds the best roots of title are—

- (1) A legal mortgage in fee.
- (2) A purchase deed.
- (3) A settlement for value.
- (4) An appointment reciting the power under which it is made (*u*).
- (5) An exchange or partition made by deed since the 1st October, 1845, and not under the Inclosure Acts.
- (6) A will, but in this case evidence of seisin at the date of death is necessary.
- (7) A disentailing assurance containing a recital of the deed creating the entail.

The following are not satisfactory roots of title:—

- (1) A voluntary conveyance (*x*).
- (2) A disentailing assurance not accompanied by the deed creating the entail or containing a full recital of it.
- (3) Awards of inclosure and orders of partition or exchange under the Inclosure Acts, 1845 to 1882 (*y*), which

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3), (9).

(*t*) *Re Scott and Alvarez's Contract*, (1895) 2 Ch. 603 ; 64 L. J. Ch. 821 ; 73 L. T. 43 ; 43 W. R. 694 ; 12 R. 474.

(*u*) Conveyancing Act, 1881 (44 &

45 Vict. c. 41), s. 3 (3).

(*x*) *Re Marsh and Earl Granville*, 24 Ch. D. 11 ; 53 L. J. Ch. 81 ; 48 L. T. 947 ; 31 W. R. 845.

(*y*) *Jacomb v. Turner*, (1892) 1 Q. B. 47.

depend on the title of the land inclosed, allotted or exchanged.

(4) A mortgage by demise.

(5) A lease.

In case of copyholds, the proper root of title is a surrender followed by admittance, or a devise followed by admittance.

In case of leaseholds, the lease must always be abstracted, even if, in cases of long terms, the devolutions are not continued from the commencement, but only abstracted for a reasonable period. Subject to the original lease being also abstracted, an assignment or mortgage of a lease forms a good root of title.

Requisitions.

1. *The title disclosed is too short. A further abstract taking it back for at least 40 years must be supplied.*

2. *The seisin of the testator A. B., free from incumbrances at the time of his death, of the property contracted to be sold, must be proved by a statutory declaration by some person acquainted with the facts.*

3. *Condition No. states that the title shall commence with an indenture of , 188 , but does not describe such indenture as being what it turns out to be—a disentailing deed containing no recital of the deed creating the entail. It is not a satisfactory root of title, and the deed creating the entail must be abstracted.*

SALES BY THE COURT.

See ORDER.

SATISFIED TERMS.

See TERMS, ATTENDANT AND SATISFIED.

SEARCHES.

Proper searches should always be made on behalf of a purchaser or mortgagee prior to completion; a solicitor may be held liable for loss which is occasioned to his client by the omission or negligent performance of this duty.

The following are the usual searches made in the cases specified below:—

On a Purchase from Owner in Fee—

| <i>Search.</i> | <i>Place for search.</i> | <i>Extent of search.</i> |
|---|--------------------------|--------------------------|
| Judgments..... | Central Office. | 5 years last past. |
| Crown debts | Do. | 5 years last past. |
| Executions on Crown debts. | Do. | From 1st November, 1865. |
| <i>Lis pendens</i> | Do. | 5 years last past. |
| Annuities and rent-charges. | Do. | From 26th April, 1855. |
| Writs of execution and orders affecting the land. | Land Registry Office. | 5 years last past. |
| Deeds of arrangement. | Do. | From 1st January, 1889. |
| Land charges | Do. | From 1st January, 1889. |
| Bankruptcies..... | Bankruptcy Court. | 12 years last past. |

NOTE.—In all the above cases it is in practice usually considered sufficient to search back to the last purchase for value.

On a Purchase from a Trustee or Mortgagee.—The only search which need be made against a trustee is for *lis pendens*. So also if the vendor is a mortgagee, a search for *lis pendens* is generally considered sufficient, but a search should be made for bankruptcies and deeds of arrangement, unless the vendor's position is so well known as to render this useless. It is provided by the Judgments Act, 1855 (z), in effect, that if a mortgage is paid off either prior to or at the time of execution of a conveyance after the passing of the Act, no persons having judgments against the mortgagee shall take the mortgaged land in execution; consequently, if a mortgagor sells the mortgaged property and pays off the

(z) 18 & 19 Vict. c. 15, s. 11.

mortgage, the estate in the hands of the purchaser ceases to be affected by a judgment which had been registered against the mortgagee (a).

If the property is situate in Yorkshire or Middlesex, the local registry should also be searched to ascertain whether any documents are registered which do not appear on the abstract of title.

On a mortgage, the same searches should be made as on a purchase.

On a transfer of mortgage, search should be made against the mortgagee for *lis pendens*; and if the mortgagor joins in the transfer, the searches should be made against him, as in the case of a mortgage.

On a reconveyance, the mortgagor should search against the mortgagee for *lis pendens* and bankruptcies.

On a sale subject to a mortgage, some conveyancers consider it sufficient to search for *lis pendens* only, while others require searches, such as are made on a purchase from an owner in fee, to be made against the mortgagor, back from the last purchase to the date of the mortgage; it is best to adopt the latter plan.

Where a mortgagor joins in a sale subject to a mortgage, search should be made against the mortgagee for *lis pendens*; and the same searches should be made against the mortgagor as if he were selling alone.

In the case of settled land, in addition to the usual searches, search for land charges should be made at the Land Registry Office against the tenant for life and his predecessors as such (b).

On purchase of leasehold property, the same searches are necessary as in the case of freeholds.

Certain other searches are sometimes necessary or proper in particular cases, *e.g.*, on a purchase of land which has been in settlement, search at the Land Registry Office or

(a) *Greaves v. Wilson*, 28 L. J. Ch. 103; 4 Jur. (N. S.) 802; 25 Beav. 434.

(b) The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 10.

the office of the Board of Agriculture for charges under the Improvement of Land Act, 1864 (*c*), created before the 1st of January, 1889.

On purchase of land in an urban or rural district, search at the office of the local authority for charges under the Public Health Act, 1875 (*d*). Expenses under sect. 257 of this Act are not land charges within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act (*e*).

On purchase of agricultural land, search at the office of the Board of Agriculture for charges under the Public Moneys Drainage Acts, 1846 to 1856, created before 1889 (*f*).

On a purchase of copyhold property, the same searches, with the exception of Crown debts, are made as in the case of freeholds; and, in addition, the court rolls of the manor are searched from the last purchaser for value of the property.

Where a search is necessary against a woman married before 1883, searches subsequent to the marriage should be made in the name of the husband, and with regard to judgments, Crown debts and annuities, in the joint names of husband and wife. If the woman was married after 9th August, 1870, and the property is freehold, copyhold, or customary freehold, and acquired by her as heiress of an intestate, the search will be against her alone; as it will also be if she was married or acquired the property after 1882.

Searches may, since 1882, be made in the Central Office for entries of judgments, deeds, or other matters or documents whereof entries are required or allowed to be made at that office, by delivering in the office a requisition, whereupon an official searches and makes and files a certificate of the result, of which office copies are issued; and such certificates are conclusive in favour of a purchaser, including in such term a lessee or mortgagee, intending purchaser or

(*c*) 27 & 28 Vict. c. 114.

(*d*) 38 & 39 Vict. c. 55, s. 257.

(*e*) *Reg. v. Vice-Registrar of Office of Land Registry*, 24 Q. B. D. 178;

59 L. J. Q. B. 113; 62 L. T. 117; 38 W. R. 236.

(*f*) The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 13.

mortgagee, or other person who, for valuable consideration, takes or deals with property, as against persons interested under or in respect of judgments, deeds, or other matters or documents; and where a solicitor obtains an office copy of such certificate, he is not answerable in respect of any loss which may arise from error in the certificate (*g*). A similar search can be made and certificate obtained at the Land Registry Office for documents registered there (*h*).

Statutory charges, being legal incumbrances on the property, are binding, even as against a purchaser for value without notice, and ought therefore to be shown on the abstract of title. Neither vendors nor their solicitors are bound to answer requisitions asking whether there is, to the knowledge of the vendors or their solicitors, any incumbrance or other matter affecting the property not disclosed by the abstract (*i*). Such inquiry, which formerly was common form, has now been abandoned; but it is well to remind the vendors' solicitors that the duty to disclose on the abstract all incumbrances (*k*) includes statutory charges; and this may conveniently be done by a requisition.

See JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF—LAND IMPROVEMENT ACTS—STREET IMPROVEMENTS.

Requisition.

No charge for drainage or improvements under the Public Health Act or any similar statute being referred to on the abstract, it is presumed that the vendor's solicitor has no knowledge that such charge exists.

(*g*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 2.

(*h*) The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 17.

(*i*) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

(*k*) See 22 & 23 Vict. c. 35, s. 24; 23 & 24 Vict. c. 38, s. 8.

SEISIN.

Seisin is the feudal possession of land by the tenant of an estate in fee simple, in tail, or for life. The term does not apply to estates less than freehold, they being mere chattel interests entitling the tenant to possession only. For practical purposes, however, seisin, in respect of estates of freehold, and possession, in respect of leasehold and other chattel interests, may be considered as identical.

Seisin is proved by showing that leases or agreements followed by possession thereunder were granted or entered into, and by assessments to poor rate, or land tax, or by other similar evidence, tending to show that the person dealt with the land in question as having the legal possession of it.

SEPARATE ESTATE.

See MARRIED WOMEN.

SETTLED LAND.

The statutory powers enabling limited owners to deal with settled land now most frequently taken advantage of, are those contained in the Settled Land Acts, 1882 to 1890. These have, for most purposes, practically superseded the Settled Estates Act, 1877. Cases, however, occasionally arise in which the provisions of the last-mentioned statute are still resorted to, and as, prior to the passing of the Settled Land Act, 1882, the powers of the Settled Estates Act were constantly exercised, a statement of the effect of the statute will be necessary.

Some of the chief differences between the Settled Estates Act and the Settled Land Acts are—

- (1) Application to the Court is required in all cases under the former, except for leasing under sect. 46, while under the Settled Land Acts no such application is

- (2) No notice before exercising the powers for which the leave of the Court is not necessary is required under the Settled Estates Act, such as is, in most cases, required under the Settled Land Acts.
- (3) Tenants in dower and tenants in right of a wife seised in fee have certain powers under the Settled Estates Act which they have not under the Settled Land Acts.

The person who is for the time being under a settlement beneficially entitled to possession of settled land (including incorporeal hereditaments and an undivided share in land) for his life, is, for the purposes of the Settled Land Acts, the tenant for life of that land, and the tenant for life under that settlement (*m*). Possession includes the receipt of income, rents, and profits (*n*) ; therefore, a tenant for life may be “in possession” within the meaning of the Acts, notwithstanding a lease of the premises to a tenant.

Each of the following persons, when his estate or interest is in possession, has the powers of a tenant for life under the Acts (o).

- (1) A tenant in tail.
- (2) A tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue, or in any other event.
- (3) A person entitled to a base fee.
- (4) A tenant for years determinable on life not holding under a lease at a rent.

(l) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.
(m) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2 (5), (10) (i).
(n) *Ibid.* s. 2 (10) (i).
(o) *Ibid.* s. 58 (1).

- (5) A tenant for the life of another not holding merely under a lease at a rent.
- (6) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose.
- (7) A tenant in tail after possibility of issue extinct.
- (8) A tenant by the curtesy.
- (9) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest on bankruptcy or other event.
- (10) An infant seised of or entitled to possession of land (*p*).
- (11) A person beneficially entitled to the income of land until sale under a settlement by way of trust for sale, and for the application of the proceeds or the income thereof, or of the income of the land until sale, or any part of such proceeds or income, for the benefit of any person for his life or any other limited period (*q*). In this case, however, an order of the Court has, after the 2nd July, 1884, been necessary before the powers conferred by the section can be exercised (*r*).

As bearing on the subject of the investigation of title, the Acts may be conveniently considered under the following heads :—

- (i) So far as they enable dispositions of settled land by sale, enfranchisement, exchange, or partition.

(*p*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 59.

(*q*) *Ibid.* s. 63 (1).

(*r*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.

- (ii) So far as they enable the grant of building, mining and other leases of settled land.
- (iii) So far as they empower the tenant for life to mortgage the fee simple.
- (iv) General provisions of the Acts affecting the above powers or any of them.

(i) **Sales, Enfranchisements, Exchanges, and Partitions.**

A tenant for life (subject to the general provisions stated below (*q*))—

- (1) May sell the settled land or any part of it, or any easement, right, or privilege relating to it.
- (2) Where the settlement comprises a manor, may sell the seignory of any freehold land within the manor or the freehold and inheritance of any copyhold or customary land parcel of the manor with or without any exception or reservation of mines or minerals, or of any rights or powers relating to them, so as in every such case to effect an enfranchisement.
- (3) May make an exchange of the settled land or any part of it for other land, including an exchange in consideration of money paid for equality of exchange; and
- (4) Where the settlement comprises an undivided share in land, or under the settlement the settled land has come to be held in undivided shares, may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition (*r*).

Every sale must be made at the best price, and every exchange and partition for the best consideration that can reasonably be obtained (*s*). A sale may be made in one lot or in several lots, and either by auction or by private contract (*t*). The tenant for life may fix reserve biddings and buy in at an auction (*u*).

(*q*) P. 289.

(*r*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3.

(*s*) *Ibid.* s. 4 (1), (2).*

(*t*) *Ibid.* s. 4 (3).

(*u*) *Ibid.* s. 4 (4).

A sale, exchange, or partition may be made subject to any stipulations respecting title or evidence of title or other things (*x*). And any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals or their working, or with respect to any other thing, may be imposed by covenant, condition, or otherwise on the tenant for life and the settled land or any part of it, or on the other party and any land sold or given in exchange or on partition to him (*y*).

On an exchange or partition any easement, right, or privilege of any kind may be reserved or granted over or in relation to the settled land or other land, or an easement, right, or privilege may be given or taken in exchange or on partition for land, or for any other easement, right, or privilege of any kind (*z*); and such exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines and minerals (*a*).

An enfranchisement may be made with or without a regrant of any right of common or other right, easement, or privilege appendant or appurtenant to, or held or enjoyed with the land enfranchised or reputed so to be (*b*).

Settled land in England and Wales must not be given in exchange for land out of England and Wales (*c*).

A rentcharge may be reserved on a grant in fee simple for building purposes by a tenant for life (*d*).

(ii) Leases.

A tenant for life (subject to the general provisions stated below (*e*)) may lease the settled land or any part of it, or any easement, right, or privilege of any kind over or in relation to it for any purpose whatever, whether involving waste or not, for any term not exceeding—

(1) In the case of a building lease, 99 years.

(*x*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 4 (5).

(*y*) *Ibid.* s. 4 (6).

(*z*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 5.

(*a*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 17 (2).

(*b*) *Ibid.* s. 4 (7).

(*c*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 4 (8); 20 Geo. 2, c. 42, s. 3.

(*d*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9.

(*e*) P. 289.

(2) In the case of a mining lease, 60 years.

(3) In the case of any other lease, 21 years (*e*).

Every lease must be by deed, and be made to take effect in possession not later than 12 months after its date (*f*); but where the lease does not exceed three years, it may be under hand only (*g*).

Every lease must reserve the best rent that can reasonably be obtained, regard being had to any fine taken and to any money laid out, or to be laid out, for the benefit of the settled land, and generally to the circumstances of the case; and every lease must contain a covenant or agreement, as the case may be, by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time specified not exceeding 30 days (*h*).

A counterpart of every lease must be executed by the lessee and delivered to the tenant for life, of which execution and delivery, the execution of the lease by the tenant for life is made sufficient evidence (*i*).

A statement contained in a lease or in an indorsement thereon signed by the tenant for life respecting any matter of fact or of calculation under the Act in relation to the lease in favour of the lessee and of those claiming under him, is sufficient evidence of the matter stated (*k*).

Every building lease must be made partly in consideration of the lessee or some person by whose direction the lease is granted, or some other person having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased an improvement authorized by the Act for or in connection with building purposes (*l*): a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be

(*e*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 6.

(*f*) *Ibid.* s. 7 (1).

(*g*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7 (iii).

(*h*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 7 (2), (3); Settled

Land Act, 1890 (53 & 54 Vict. c. 69), s. 7 (iii).

(*i*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 7 (4).

(*k*) *Ibid.* s. 7 (5).

(*l*) *Ibid.* s. 8 (1).

made payable for the first five years or any less part of the term (*m*).

When building land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

- (1) The annual rent reserved by any lease must not be less than 10s.
- (2) The total amount of the rents reserved on all leases for the time being granted must not be less than the total amount of the rents which, in order that the leases may be in conformity with the Act, ought to be reserved in respect of the whole land for the time being leased.
- (3) The rent reserved by any lease must not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed (*n*).

A building lease or agreement for such a lease may contain an option, to be exercised within an agreed number of years, not exceeding 10, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease or agreement, such price to be the best which can be reasonably obtained (*o*).

In a mining lease the rent may be made to vary according to the acreage worked, or the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of from the settled land or any other land (*p*), or according to the price of the minerals or substances gotten or any of them (*q*).

A dead rent may be made payable with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the dead rent, to make up the deficiency in any

(*m*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 8 (2).

(*n*) *Ibid.* s. 8 (3).

(*o*) Settled Land Act, 1889 (52 & 53 Vict. c. 36), s. 2.

(*p*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 9 (1) (i).

(*q*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 8.

subsequent specified period free of rent other than the dead rent (*r*).

Unless a contrary intention appears in the settlement, there must be set aside as capital money under the Act part of the rent, viz., where the tenant for life is impeachable for waste in respect of minerals, three fourths, and otherwise one-fourth; in every such case the residue goes as rents and profits (*s*), and it appears that the tenant must pay to the trustees or into Court such part of the rent as the tenant for life is not entitled to (*t*).

A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased an improvement authorized by the Act for or in connection with mining purposes (*u*).

A lease for a term not exceeding 21 years at the best rent which can reasonably be obtained, and whereby the lessee is not exempted from punishment for waste, may, after the 17th August, 1890, be made by a tenant for life without any notice of an intention to make it having been given to the trustees, and notwithstanding there are no trustees for the purposes of the Act (*v*).

(iii) Mortgages.

Where money is required for enfranchisement or for equality of exchange or partition, the tenant for life may (subject to the general provisions stated below (*x*)) raise it on mortgage of the settled land or of any part of it by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years, or otherwise (*y*). And where money is required for the purpose of discharging an incumbrance (not including an annual sum payable only during a life or lives, or during a term of years

(*r*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 9 (1) (ii).

(*s*) *Ibid.* s. 11.

(*t*) Settled Land Act Rules, 1882, Appendix, Forms II. (f) and X.

(*u*) Settled Land Act, 1882 (45 &

46 Vict. c. 38), s. 9 (2).

(*v*) See p. 289; Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7 (1), (2).

(*x*) P. 289.

(*y*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 18.

absolute or determinable) on the settled land or part of it, the tenant for life may raise the money so required, and also the amount properly required for the payment of the costs of the transaction, on mortgage of the settled land or of any part of it by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years, or otherwise (s).

Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged with it or not, in exoneration of the part sold or so given, and by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years, or otherwise make provision accordingly (a).

(iv) General Provisions.

The following persons are trustees of a settlement for the purposes of the Settled Land Acts :—

- (1) The persons, if any, who are for the time being under a settlement the trustees with power of sale of the settled land, or with power to consent to or approve of the exercise of such power of sale. Failing such persons,
- (2) The persons, if any, for the time being who are by the settlement declared to be trustees for the purposes of the Act. Failing such persons,
- (3) The persons who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement, and subject to the same limitations as the land to be sold, or with power to so consent or approve of the exercise of such a power of sale. Failing such persons,

(s) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 11.

(a) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 5.

- (4) The persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale, of the land to be sold, or with power to consent to or approve of the exercise of such a future power, and whether the power or trust takes effect in all events or not (*b*).
- (5) If at any time there are no trustees of a settlement within the definition of the Acts, or where it is expedient that new trustees should be appointed, the Court may, on the application of any person interested, appoint trustees for the purposes of the Acts (*c*).

The principal mansion-house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied with it, cannot be sold, exchanged or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court (*d*). Where a house is usually occupied as a farm-house, or where the site of any house, and the pleasure grounds and park and lands (if any) usually occupied with it, do not together exceed 25 acres in extent, the house is not, after the 17th August, 1890, to be deemed a principal mansion-house within the meaning of the above provision (*e*).

The Act of 1882 contains provisions enabling the tenant for life, on a sale or grant for building purposes, to dedicate part of the settled land for streets and open spaces, and to construct sewers, and to convey or vest the same in the trustees of the settlement or any company or public body (*f*).

The surface and minerals may be dealt with separately with or without way-leaves, powers of working and other easements (*g*).

Where the settled land comprises an undivided share in land, the tenant for life of such share may join or concur

(*b*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2 (8); Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16.

(*c*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 38 (1).

(*d*) *Ibid.* s. 15; Settled Land

Act, 1890 (53 & 54 Vict. c. 69), s. 10 (2).

(*e*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10 (3).

(*f*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 16.

(*g*) *Ibid.* s. 17 (1).

with any other person having power or right of disposition of or over another undivided share (*h*).

The conveyance or lease of the tenant for life, to the extent and in the manner in which it is expressed to operate under the Act, is effectual to pass the land, or the easements, rights or privileges created discharged from all the limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise under it; but subject to all estates, interests and charges having priority to it, and such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed, and all leases and grants for value before the date of the deed (*i*).

In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor (*k*), and no surrender is required.

A tenant for life may make any conveyance or lease necessary or proper for giving effect to a contract entered into by a predecessor in title, and which, if made by the predecessor, would have been valid as against his successors in title (*l*).

Purchase-money must be paid either to the trustees of the settlement or into Court at the option of the tenant for life (*m*); but it is not to be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee (*n*).

The receipt in writing of the trustees of a settlement, or, where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities paid or transferred, discharges the payer or transferor there-

(*h*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 19.

(*i*) *Ibid.* s. 20 (1), (2).

(*k*) *Ibid.* s. 20 (3).

(*l*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 6; Settled Land

Act, 1882 (45 & 46 Vict. c. 38), s. 12(*i*).

(*m*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22 (1).

(*n*) *Ibid.* s. 39.

from and from being bound to see to the application, or being answerable for any loss or misapplication thereof, and in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of the Act, or that no more than is wanted is raised (*o*).

Notice must be given by the tenant for life to the trustees when intending to make a sale, exchange, partition, lease, mortgage or charge (*p*); but a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice (*q*). The notice may be in general terms, except as to a mortgage or charge, and may be waived by writing by a trustee (*r*).

Although a person dealing in good faith with the tenant for life need not inquire whether notice has been given, yet he must satisfy himself that there are trustees for the purposes of the Acts (*s*).

Where a tenant for life, or a person having the powers of a tenant for life, under the Settled Land Acts is an infant, or an infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under the Act, or an infant is, in his own right, seised of or entitled to the possession of land, the powers of a tenant for life under the Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, orders (*t*).

The general provisions of the Acts do not apply to married women, but it is provided that where a married woman who otherwise would have been a tenant for life, or would have had the powers of a tenant for life, is entitled for her separate use or as a *feme sole*, then she, without her husband, has the powers of a tenant for life under the Act (*u*). Where not

(*o*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 40.

(*p*) *Ibid.* s. 45 (1).

(*q*) *Ibid.* s. 45 (3).

(*r*) Settled Land Act, 1884 (47 &

48 Vict. c. 18), s. 5 (3).

(*s*) See p. 289.

(*t*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 60.

(*u*) *Ibid.* s. 61 (1), (2).

so entitled, then she and her husband together have such powers (*x*). A restraint on anticipation does not prevent the exercise of the powers by a married woman (*y*).

Where the tenant for life, or person having the powers of a tenant for life, under the Acts is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf under an order of the Court in Lunacy, exercise the powers of a tenant for life under the Acts. The order may be made on the petition of any person interested in the settled land or of the committee of the estate (*z*). The power of sale given by the Acts cannot be exercised in the case of a person lawfully detained as a lunatic though not so found (*a*); but the committee of the estate of such person appointed under sect. 116 of the Lunacy Act, 1890 (*b*), may, by leave of a judge, exercise the power of leasing vested in the lunatic by the Settled Land Act, 1882 (*c*).

An order of the Court has after the 2nd July, 1884, been necessary to enable the powers conferred by sect. 63 of the Act of 1882 to be exercised in respect of land subject to a trust for sale, and until such an order is made, the trustees are at liberty to exercise the powers given by the settlement. On an order being made, while it remains in force, no person other than the person having leave under it, can execute any trust or power created by the settlement for any purpose for which leave is, by the order, given to exercise a power conferred by the Acts. The order requires registration as a *lis pendens*, and if not so registered, and, where necessary, re-registered, it does not affect any person dealing with the trustees (*d*).

Where dealings under the powers of the Acts are proposed between the tenant for life and the estate, the trustees of the settlement stand in the place of and represent the tenant for

(*x*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 61 (3).

(*y*) *Ibid.* s. 61 (6).

(*z*) *Ibid.* s. 62.

(*a*) *Re Baggs*, (1894) 2 Ch. 416; 96 L. T. Journ. 198.

(*b*) 53 & 54 Vict. c. 5.

(*c*) 45 & 46 Vict. c. 38, s. 6; *Re Salt*, (1896) 1 Ch. 117; 65 L. J. Ch. 152; 73 L. T. 598; 44 W. R. 146.

(*d*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.

life, and, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the contract (*e*).

The Settled Estates Act.

The object of the Settled Estates Act was to facilitate the leasing and sale of settled estates; but with the exception of certain leases which the tenant for life, if not restrained by the settlement, can make (*f*), leases and sales under the Act can only be made by the consent of the Court.

(i) Sales.

The Court may authorize sales of the settled estates and timber, other than ornamental timber (*g*); and direct who shall execute the conveyance (*h*); and on any sale earth, coal, stone and minerals may be excepted (*i*).

(ii) Leases.

Leases for 21 years of land, except the principal mansion-house and demesnes, may, unless the settlement prohibits, be made without any order of the Court (*k*) by a tenant for any life or for years determinable with any life or lives, or for any greater estate either in his own right or right of his wife; and also by any tenant by the curtesy or in dower or in right of a wife who is seised in fee; but this provision only applies to settlements made after the 1st November, 1856 (*l*). Such leases must take effect at or within one year from the making, and must be by deed at the best rent which can be reasonably obtained, and they must be without fine and without impeachment of waste, and must contain a covenant for payment

(*e*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 12.

(*f*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46.

(*g*) *Ibid.* s. 16.

(*h*) *Ibid.* s. 22.

(*i*) *Ibid.* s. 19.

(*k*) *Ibid.* s. 46.

(*l*) *Ibid.* s. 57.

of rent, and a condition for re-entry on non-payment for 28 days or a lesser period, and a counterpart must be executed by the lessee (*m*).

Leases which may be authorized by the Court under the Act must take effect in possession at or within a year from the making, and must not exceed for an agricultural or occupation lease 21 years, for a mining lease 40 years, for a repairing lease 60 years, and for a building lease 99 years. The best rent obtainable must be reserved, and it must be payable half-yearly or more frequently, and no fine must be taken. The lease must be by deed and contain a condition for re-entry on non-payment of rent for 28 days, and the lessee must execute a counterpart, and, in case of a mining lease, the portion of the rent specified in the Act must be set aside as capital (*n*). The Court may either direct who shall execute the lease as lessor or may vest general powers of leasing in the trustees (*o*).

(iii) General Provisions.

The Act specifies who may petition the Court to exercise its powers (*p*). Applications to the Court are to be made with the consent and concurrence of certain persons (*q*), which can in certain cases be dispensed with (*r*). An order is not, as against a purchaser, invalidated by want of jurisdiction or concurrence, consent, notice or service, whether the purchaser has notice of any such want or not (*s*).

All money received on any sale effected under the Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone or minerals, may, if the Court think fit, be paid to any trustees of whom it shall approve, otherwise the same must be paid into Court, and such money is by the Act to be applied, as the Court from time

(*m*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46.

(*n*) *Ibid.* ss. 4, 12.

(*o*) *Ibid.* s. 13.

(*p*) *Ibid.* s. 23.

(*q*) *Ibid.* s. 24.

(*r*) *Ibid.* ss. 25—29.

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70 (1).

to time directs, to some one or more of the purposes specified in the Act (*t*).

Where real estate is devised to trustees upon trust to sell at their discretion, and invest the proceeds and pay the income to one or more persons successively for life, with remainder over, such estate is a settled estate within the meaning of the Act (*u*); and on or after the 1st January, 1882, where a person entitled to land in fee or for any leasehold interest at a rent is an infant, the land is deemed a settled estate within the Act (*x*).

The Act contains provisions with regard to application being made and consents given on behalf of persons under disability, and amongst other things provides that if a married woman applies to the Court or consents to an application, she must be separately examined, even if her property, the subject of the application, be settled in trust for her separate use, and no clause against anticipation is to prevent the Court from exercising its powers (*y*).

See SETTLEMENTS—TRUSTEES, SALES AND MORTGAGES BY.

Requisitions.

1. *A. B. and C. D., the trustees of the will of X., deceased, have no power of sale, and are not, therefore, trustees within the meaning of the Settled Land Acts, 1882 to 1890; trustees for the purposes of the Acts must therefore be appointed.*

2. *Has the consent of C. D., who is entitled to the mortgage having priority to the settlement, been obtained to the sale?*

3. *The house and premises contracted to be sold appear to be the principal mansion house and grounds as defined by the*

(*t*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 34.

(*u*) *Re Laing's Trusts*, L. R. 1 Eq. 416; 85 L. J. Ch. 282; 14 L. T. 56; 14 W. R. 328; 12 Jur. (N. S.) 119.

(*x*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 41.

(*y*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 50; *Re Horne's Settled Estates*, 29 L. T. 830.

Settled Land Act, 1890, s. 10; the consent of the trustees of the settlement or an order of the Court must therefore be obtained and produced.

4. *It is presumed that no order has been obtained under the Settled Land Act, 1884, s. 7, giving the tenant for life leave to exercise the powers given by sect. 63 of the Settled Land Act, 1882.*

5. *Has the tenant for life mortgaged or dealt with his life interest in any way? If he has, the consent of the mortgagees must be shown.*

SETTLEMENTS.

Alienations of land, goods, or chattels made with intent to delay, hinder, or defraud creditors are voidable, except against a *bonâ fide* purchaser for valuable consideration (z) having no notice (a). The exception in favour of such purchasers includes a purchaser of any interest under the deed impeached, whether that interest be legal or equitable, and prevents the deed being void against him (b). A settlement in consideration of marriage may come within the statute the marriage was merely part of a scheme to defraud and delay creditors and protect the settlor's property from their claims (c); as also may any other alienations for valuable consideration if good faith on the part of the alienee is wanting (d).

The effect of another statute of Elizabeth (e) was, until the 29th June, 1893, that all voluntary settlements of lands, whether freehold, leasehold, or copyhold, were held to be void as against subsequent *bonâ fide* purchasers for value,

(z) *Twyne's Case*, 3 Rep. 80 b; 1 Sm. L. C. 1.

(a) 13 Eliz. c. 5.

(b) *Halifax Joint Stock Banking Co. v. Gledhill*, (1891) 1 Ch. 31; 60 L. J. Ch. 181; 63 L. T. 623; 39 W. R. 104.

(c) *Columbine v. Penhall*, 1 W. R. 272; 1 Sm. & G. 228; *Bulmer v. Hunter*, L. R. 8 Eq. 46; 38 L. J. Ch. 543; 20 L. T. 942.

(d) *Twyne's Case* (and notes thereunder), 3 Rep. 80 b; 1 Sm. L. C. 1.

(e) 27 Eliz. c. 4.

even with notice, on the principle that the vendor, by afterwards selling for a valuable consideration, must be taken to have made a voluntary conveyance in order to defeat the purchaser, and now liable to be set aside as fraudulent; but on or after the 29th June, 1893, no voluntary conveyance of any lands, tenements, or hereditaments made *bonâ fide* and without any fraudulent intent is deemed fraudulent within the meaning of that Act by reason of any subsequent purchase for value, or can be defeated under any of the provisions of that Act by a conveyance made upon any such purchase (*f*). This Act does not apply in any case in which a voluntary settlor has subsequently, but before the 29th June, 1893, disposed of or dealt with the lands in question to or in favour of a purchaser for value (*g*).

A conveyance or assignment of the property of a debtor to a trustee for the benefit of his creditors generally is an act of bankruptcy (*h*), and as the title of the trustee in bankruptcy relates back to the first act of bankruptcy committed by the bankrupt within three months preceding the presentation of the bankruptcy petition (*i*), such a conveyance is void if a bankruptcy ensues within such period (*k*).

Every conveyance or transfer by a person unable to pay his debts as they become due in favour of any creditor, with a view of giving such creditor a preference, if the person making the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date thereof, is deemed fraudulent and void as against the trustee in the bankruptcy (*l*); but this does not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt (*m*).

(*f*) Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), s. 2.

(*g*) *Ibid.* s. 3.

(*h*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1); *Ex parte Villars, Re Rogers*, L. R. 9 Ch. 432, at p. 443; 43 L. J. Bk. 76; 30 L. T. 348; 22 W. R. 397.

(*i*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 43.

(*k*) See under Act of 1869, *Ex parte Villars, Re Rogers*, L. R. 9 Ch. 432, at p. 443; 43 L. J. Bk. 76; 30 L. T. 348; 22 W. R. 397.

(*l*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48 (1).

(*m*) *Ibid.* s. 48 (2).

Any settlement of property, not being a settlement made before or in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith (*i.e.*, on the part of the purchaser (*n*)) and for valuable consideration, or one made on the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, is, if the settlor becomes bankrupt within two years after the date of the settlement, void against the trustee in the bankruptcy, and if the settlor becomes bankrupt at any subsequent time within 10 years after the date of the settlement, is void against such trustee, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on its execution (*o*). It has been held that the expression "void" in the section of the Bankruptcy Act containing this provision may be construed as "voidable," and that a voluntary settlement is not void against the settlor's trustee in bankruptcy from its date, but only from the time the trustee's title accrued, so that if before that time the property comprised in the settlement has been sold *bonâ fide* to a purchaser for value, the title of the purchaser will be good as against the trustee (*p*).

Covenants to settle after-acquired property are of common occurrence in marriage settlements: in the absence of expressions showing a contrary intention, such covenants are construed as applying only to property acquired during the coverture, even though the words "during the said intended coverture" are omitted (*q*). A covenant of this description

(*n*) *Mackintosh v. Pogose*, (1895) 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251; 43 W. R. 247; 13 R. 254.

(*o*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47 (1).

(*p*) *Re Brall, Ex parte Norton*, (1893) 2 Q. B. 381; 62 L. J. Q. B. 457; 69 L. T. 323; 41 W. R. 623; 5 R. 440; 10 Morrell, 166; *Re Carter*

and Kenderdine's Contract, (1897) 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.

(*q*) *Re Edwards*, L. R. 9 Ch. 97; 43 L. J. Ch. 265; 29 L. T. 712; 22 W. R. 144; *Re Campbell's Policies*, 6 Ch. D. 686; 46 L. J. Ch. 142; 25 W. R. 268.

attaches to property which is settled to the separate use of a married woman, unless it be subject to a restraint against alienation (*r*), and to a reversionary interest to which the covenantor becomes entitled during the coverture, but which does not fall into possession until after the determination (*s*); but it does not attach to property over which the covenantor has a general power of appointment (*t*). All covenants made in consideration of marriage in favour of the settlor's wife or children to settle any property in which he had not, at the date of his marriage, any estate or interest, vested or contingent, in possession or remainder, and not being property in right of his wife, are void against the trustee in bankruptcy, unless the property has been actually transferred pursuant to the covenant (*u*).

The settlement of an infant is voidable and not void. If repudiated, such repudiation must take place within a reasonable time of the infant coming of age (*x*).

The Infant Settlements Act (*y*) enables infants, if males, at the age of 20, and if females, at 17, to make binding settlements on marriage with the leave of the Court, which is obtained in a summary manner.

See COVENANTS—INFANTS—SETTLED LAND.

Requisitions.

1. *The consideration for the sale by A. B. to X. Y. is not stated in the deed of 18 . Inasmuch as the title of A. B. was under a voluntary deed and he afterwards became bankrupt, the vendor must, at his own expense, prove that the sale to X. Y. was a bonâ fide sale for valuable consideration, otherwise the title is not good against A. B.'s trustee in bankruptcy.*

(*r*) *Brooks v. Keith*, 4 L. T. 541; 9 W. R. 565; 7 Jur. (N. S.) 482; 1 Dr. & Sm. 462.

(*s*) *Butcher v. Butcher*, 14 Beav. 222.

(*t*) *Bower v. Smith*, L. R. 11 Eq. 279; 40 L. J. Ch. 194; 24 L. T.

118; 19 W. R. 399.

(*u*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47 (2).

(*x*) *Edwards v. Carter*, (1893) A. C. 360; 63 L. J. Ch. 100; 69 L. T. 153; 1 R. 218; 58 J. P. 4.

(*y*) 18 & 19 Vict. c. 43.

2. *The conveyance by C. D. of , 18 , being a voluntary one made prior to the Voluntary Conveyances Act, 1893, the vendor must, at his own expense, supply evidence to show that C. D. did not subsequently convey the premises to a purchaser for value.*

SEWERS.

See LAND IMPROVEMENT ACTS—STREET IMPROVEMENTS.

SPES SUCCESSIONIS.

A mere *spes successionis* is not a title to property in English law. No one can have any estate or interest at law or in equity, contingent or otherwise, in the property of a living person to whom he hopes to succeed as heir-at-law or next of kin (z).

In equity, however, a *spes successionis* might always be assigned, and such an assignment, if for valuable consideration, will be enforced. For instance, contracts made in consideration of marriage to convey future-acquired property upon the trusts of the marriage settlement are of common occurrence, and have long been held enforceable.

With regard to the *spes successionis* of an expectant tenant in tail, the Fines and Recoveries Act, 1833, provides that nothing in the Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein, and further, excludes Courts of Equity from giving effect to dispositions which in Courts of Law would not be effectual (a). An expectancy of this description cannot therefore be disposed of at law; but, inasmuch as it has been held

(z) *Re Parsons, Stockley v. Parsons*, 45 Ch. D. 51; 59 L. J. Ch. 666; 62 L. T. 929; 38 W. R. 712.

(a) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 20, 47.

by the Court of Appeal that the Act does not interfere with the jurisdiction of the Court to decree against a tenant in tail specific performance of a contract for disentailment entered into by him, but only prevents the Court from treating the contract as being in equity a disposition taking effect under the Act so as to bind the issue in tail and remaindermen (*b*), it is apprehended that a contract for value to dispose of a *spes successionis* as tenant in tail would, on the estate falling into possession in the lifetime of the expectant tenant in tail, be enforced in equity against him.

A *spes successionis* does not come within the provisions of the statutes whereby contingent, executory, and future interests, and possibilities coupled with an interest, in hereditaments of any tenure have, since the 1st January, 1845, been alienable by deed (*c*).

STAMPS.

It should be seen that every document material to the title is properly stamped. If any such document is not stamped, or is insufficiently stamped, the purchaser is entitled to have it stamped at the vendor's expense, the vendor paying any penalty which may have been incurred.

It was formerly common form in conditions of sale to provide that no objection or requisition should be made upon the ground of the absence or insufficiency of any stamp; but now, with regard to instruments executed on or after the 16th May, 1888, every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of any stamp upon any such instrument, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of any stamp upon any such instrument, or indemnifying against

(*b*) *Bankes v. Small*, 36 Ch. D. 716;
6 L. J. Ch. 832; 57 L. T. 292; 35
W. R. 765.

(*c*) 7 & 8 Vict. c. 76, s. 5; Real
Property Act, 1845 (8 & 9 Vict.
c. 106), s. 6.

such liability, absence, or insufficiency, is void (*d*); but such a condition, if limited to instruments executed before the 16th May, 1888, is good and binding on a purchaser.

It is not proposed to consider the statutes by which the stamp duties on deeds and other documents were regulated prior to the 1st January, 1871. A list of these enactments will be found in the schedule to the Inland Revenue Repeal Act, 1870 (*e*), which repeals them all as from the 1st January, 1871.

After the 31st December, 1870, the duties on the various instruments which usually occur in investigation of title are—

Agreement for lease —

s. d.

(1) For any term not exceeding 35 years—same duty as a lease for the same period and for the same consideration (*f*).

(2) For 35 years or more - - - - - 0 6

(3) For an indefinite term—

(i) If executed before the 1st January, 1892 - 0 6

(ii) If executed on or after the 1st January, 1892—
same duty as on a lease for an indefinite term
for the same consideration (*g*).

Agreement for sale—

(1) Of an equitable interest in any property whatsoever:

(2) Of any goods or stock, or marketable securities, or ships, or shares therein, on or after the 31st May, 1889—same duty as on a conveyance for the same consideration (*h*).

Agreement under hand only not otherwise specifically charged with duty, the subject-matter whereof is not less than 5*l*. - - - - - 0 6

(*For exemptions, see Schedule I. to Stamp Act, 1891 (54 & 55 Vict. c. 39).*)

(*d*) The Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 20; The Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 117.

(*e*) 33 & 34 Vict. c. 99.

(*f*) 33 & 34 Vict. c. 97, s. 96; 54 & 55 Vict. c. 39, s. 75.

(*g*) 54 & 55 Vict. c. 39, s. 75.

(*h*) Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 18; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 15; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59.

| | | |
|--|-----------|-----------|
| Agreement under seal not otherwise specifically charged | s. | d. |
| with duty - - - - - | 10 | 0 |

| | | | | | | |
|--|---|---|---|---|----|---|
| Appointment in execution of power | - | - | - | - | 10 | 0 |
|--|---|---|---|---|----|---|

| | | | | | | |
|-----------------------------------|---|---|---|---|----|---|
| Appointment of new trustee | - | - | - | - | 10 | 0 |
|-----------------------------------|---|---|---|---|----|---|

Conveyance or transfer on sale, other than the conveyance of an equity of redemption or a transfer of mortgage (*which see*).

1. Where the consideration does not consist of money payable periodically, and its amount or value does not exceed 5*l*. - - - - - 0 6

Exceeds 5*l*., but does not exceed 10*l*. - - - 1 0

„ 10*l*. „ „ 15*l*. - - - 1 6

„ 15*l*. „ „ 20*l*. - - - 2 0

„ 20*l*. „ „ 25*l*. - - - 2 6

„ 25*l*. „ „ 300*l*.

For every 25*l*. and for every fractional part of 25*l*. of such amount or value - - - - - 2 6

And when the consideration exceeds 300*l*., for every 50*l*. and for every fractional part of 50*l*. of such amount or value - - - - - 5 0

2. Where the consideration consists of money payable periodically—

(i) For a definite period not exceeding 20 years—chargeable with duty on the total amount to be paid (*i*).

(ii) For a definite period exceeding 20 years—chargeable with duty on the total amount to be paid if executed before the 1st January, 1892 (*k*), and with duty on the amount payable during first 20 years if executed on or after that date (*l*).

(iii) If payable in perpetuity or for any indefinite period not terminable with life—chargeable with duty on the amount payable during first 20 years (*m*).

(i) 33 & 34 Vict. c. 97, s. 72;
54 & 55 Vict. c. 39, s. 56.

(k) Stamp Act, 1870 (33 & 34 Vict.
c. 97), s. 72.

(l) Stamp Act, 1891 (54 & 55 Vict.
c. 39), s. 56.

(m) 33 & 34 Vict. c. 97, s. 72;
54 & 55 Vict. c. 39, s. 56.

- (iv) If payable for life or lives on the amount—
chargeable with duty payable during the first
12 years (*n*). s. d.

Conveyance of equity of redemption on sale—chargeable with *ad valorem* duty as a conveyance on the sum total of the amount paid for the equity of redemption and the amounts due to the several mortgagees.

Conveyance otherwise than for value - - - - 10 0

Deed not otherwise charged with duty - - - - 10 0

Exchange—

(1) Where the amount paid for equality of exchange
does not exceed 100*l*. - - - - 10 0

(2) Where the amount paid for equality of exchange
exceeds 100*l*.—same *ad valorem* duty as a conveyance
on sale for the consideration.

Duplicate or counterpart - - - - 5 0

Lease—

(1) For a term of one year at a rent not exceeding 10*l*.
per annum made after the 31st December, 1891 - 0 1

(2) For any definite term less than one year—

(i) Of any dwelling-house or part thereof not ex-
ceeding the rate of 10*l*. per annum - 0 1

(ii) Of any furnished dwelling-house when the rent
for such term exceeds 25*l*. - 2 6

(iii) Of lands except as aforesaid—same duty as a
lease for a year at the rent reserved for the
duplicate term.

(3) For any other definite term, or for any indefinite
term, of any lands where the consideration or any
part thereof consists of any money, stock, or secu-
rity in respect of such consideration—same duty
as a conveyance on a sale for the same considera-
tion.

(*n*) 33 & 34 Vict. c. 97, s. 72; 54 & 55 Vict. c. 39, s. 56.

Where the consideration or any part of the consideration is any rent, in respect of such consideration :—

| | If the term does not exceed 35 years or is indefinite. | If the term exceeds 35 years, but does not exceed 100 years. | If the term exceeds 100 years. |
|--|--|--|--------------------------------|
| | £ s. d. | £ s. d. | £ s. d. |
| Not exceeding 5%. per annum | 0 0 6 | 0 3 0 | 0 6 0 |
| Exceeding 5%. and not exceeding 10%. .. | 0 1 0 | 0 6 0 | 0 12 0 |
| " 10%. " " 15%. .. | 0 1 6 | 0 9 0 | 0 18 0 |
| " 15%. " " 20%. .. | 0 2 0 | 0 12 0 | 1 4 0 |
| " 20%. " " 25%. .. | 0 2 6 | 0 15 0 | 1 10 0 |
| " 25%. " " 50%. .. | 0 5 0 | 1 10 0 | 3 0 0 |
| " 50%. " " 75%. .. | 0 7 6 | 2 5 0 | 4 10 0 |
| " 75%. " " 100%. .. | 0 10 0 | 3 0 0 | 6 0 0 |
| " 100%. | | | |
| For every full sum of 50%. and also for any fractional part of 50%. thereof | 0 5 0 | 1 10 0 | 3 0 0 |

(4) Of any other kind whatsoever - - - - - s. d.
10 0

Counterpart or duplicate of lease—

(1) When the duty on lease does not amount to 5s.—
same duty as the original lease.

(2) In any other case - - - - - 5 0

Memorial to be registered pursuant to any Act for the time being in force relating to the public registering of deeds—

(1) Where the instrument registered is chargeable with any duty not amounting to 2s. 6d.—same duty as the registered instrument.

(2) In any other case - - - - - 2 6

Mortgage bond, debenture, or covenant—

(1) Being the only, or principal, or primary security (other than an equitable mortgage effected by an agreement or memorandum under hand only, executed on or after the 16th May, 1888)—

For money not exceeding 10%.—

If made before the 25th August, 1883 - - - 0 8

If made on or after the 25th August, 1883 (o) - 0 3

| | s. | d. |
|---|----|----|
| For money exceeding 10 <i>l.</i> , and not exceeding 25 <i>l.</i> | 0 | 8 |
| Exceeding 25 <i>l.</i> and not exceeding 50 <i>l.</i> - - | 1 | 3 |
| „ 50 <i>l.</i> „ „ 100 <i>l.</i> - - | 2 | 6 |
| „ 100 <i>l.</i> „ „ 150 <i>l.</i> - - | 3 | 9 |
| „ 150 <i>l.</i> „ „ 200 <i>l.</i> - - | 5 | 0 |
| „ 200 <i>l.</i> „ „ 250 <i>l.</i> - - | 6 | 3 |
| „ 250 <i>l.</i> „ „ 300 <i>l.</i> - - | 7 | 6 |
| „ 300 <i>l.</i> , for every 100 <i>l.</i> - - | 2 | 6 |
| And also for every fractional part of 100 <i>l.</i> - | 2 | 6 |

- (2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage effected by an agreement or memorandum under hand only, executed on or after 16th May, 1888), or by way of further assurance where the primary security is duly stamped—

For every 100*l.*, and also for every fractional part of 100*l.* of amount secured - - - - 0 6

- (3) Being an equitable mortgage of any property (other than stock or marketable security) effected by an agreement or memorandum under hand only, executed on or after the 16th May, 1888 (*p*)—

For every 100*l.* and any fractional part of 100*l.* of amount secured - - - - 1 0

- (4) Being effected by instrument under hand only, executed on or after the 16th May, 1888, given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery by way of security for any loan (*q*) - - - - 0 6

Order for foreclosure.—Same duty as on a conveyance on sale for amount of mortgage money or for value of property, whichever is less (*r*).

(*p*) The Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 15; 54 & 55 Vict. c. 39, s. 86.

(*q*) 51 & 52 Vict. c. 8, s. 14;

54 & 55 Vict. c. 39, s. 23.

(*r*) 33 & 34 Vict. c. 97, ss. 70, 73;

54 & 55 Vict. c. 39, ss. 54, 57;

61 & 62 Vict. c. 10, s. 6.

Order, vesting, on sale.—Same duty as on conveyance on sale (s). s. d.

Order, vesting, otherwise than on sale or mortgage.—Same duty as on conveyance or transfer of property (t).

Partition—

(1) Where the amount paid for equality of partition does not exceed 100l. - - - - - 10 0

(2) Where the amount paid for equality of partition exceeds 100l.—same *ad valorem* duty as a conveyance on sale for the consideration.

Duplicate or counterpart - - - - - 5 0

Policy of life insurance (u)—

Where the sum insured does not exceed 10l. - - 0 1

Exceeds 10l. but does not exceed 25l. - - 0 3

Exceeds 25l. but does not exceed 500l.—

For every full sum of 50l., and also for any fractional part of 50l. of the amount insured - - 0 6

Exceeds 500l., but does not exceed 1,000l., for every full sum of 100l. and also for any fractional part of 100l. of the amount insured - - 1 0

Exceeds 1,000l., for every full sum of 1,000l. and also for every fractional part of 1,000l. of the amount insured - - - - - 10 0

Receipt for money amounting to 2l. or upwards - - 0 1

This does not apply to a receipt written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.

For the other exceptions, see Schedule I. of the Stamp Act, 1891, as amended by the Finance Act, 1895 (x).

(s) 33 & 34 Vict. c. 97, s. 70 ;
54 & 55 Vict. c. 39, s. 54.

(t) 33 & 34 Vict. c. 97, s. 78 ;
54 & 55 Vict. c. 39, s. 62.

(u) Defined in the Stamp Act, 1891
(54 & 55 Vict. c. 39), s. 98.

(x) 58 & 59 Vict. c. 16, s. 9.

Reconveyance of any mortgage security.—For every s. d.
 100*l.* and also for every fractional part of 100*l.* of
 the total amount or value of the money at any time
 secured - - - - - 0 6

Release or renunciation of any property otherwise than
 upon a sale or mortgage - - - - - 10 0

Settlement.—Any instrument, whether voluntary or upon
 good or valuable consideration, other than a *bond fide*
 pecuniary consideration whereby any definite and
 certain principal sum of money, or any definite and
 certain amount of stock or any security is settled or
 agreed to be settled in any manner whatsoever.
 For every 100*l.* and also for any fractional part of
 100*l.* of the amount or value of the property settled
 or agreed to be settled - - - - - 5 0

Exemption.—Instrument of appointment relating
 to any property in favour of persons specially named
 or described as the object of the power of appoint-
 ment where duty has been duly paid in respect of
 the same property upon the settlement creating the
 power or the grant of representation of any will or
 testamentary instrument creating the power.

Transfer of any mortgage bond, debenture, or covenant,
 or of any money or stock secured by any such in-
 strument—

For every 100*l.* and also for any fractional part of
 100*l.* of the amount transferred, exclusive of
 interest which is not in arrear - - - - - 0 6

See DEATH DUTIES.

Requisitions.

1. *The voluntary conveyance of , 18 , appears not to have been stamped. It must be stamped with a 10s. stamp before completion, and any penalty that may be enforced must be paid by the vendor.*

2. *Notwithstanding the condition of sale precluding objections or requisitions upon the ground of the absence or insufficiency of any stamp, the purchaser must have the*

settlement of 1889 properly stamped before completion, and the vendor must pay whatever penalty is enforced.

3. The transfer of the mortgage for £2,500 on the appointment of new trustees is not sufficiently stamped with a 10s. deed stamp. It should be stamped with an ad valorem duty of 6d. for every £100 secured by the mortgage. The additional stamp must therefore be affixed, and any penalty that may have been incurred must be paid before completion.

STATUTE.

See ACT OF PARLIAMENT.

STATUTORY DECLARATION.

See BIRTHS, MARRIAGES, AND DEATHS—POSSESSORY TITLE.

STOP ORDER.

See DISTRINGAS AND STOP ORDER.

STREET IMPROVEMENTS.

Expenses of sewerage and paving streets (not being highways repairable by the inhabitants at large) incurred by a local authority under the Public Health Act (y) are a charge upon the premises in respect of which they have been incurred (s). The expenses of sewerage or paving a new street under the Metropolitan Management Acts, though not a charge on the premises, can be recovered from a purchaser of

(y) 38 & 39 Vict. c. 55, s. 150.

(s) *Ibid.* s. 257.

the premises (a); and if so recovered, a purchaser cannot recover the amount so paid from the vendor under the vendor's covenant against incumbrances (b); it is therefore very important on a purchase of property adjoining any street to inquire whether any expenses of sewerage or paving have been incurred by the local authority or vestry. No register is kept of such charges, which are not "land charges" within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act (c).

Expenses of sewerage or paving streets (not being streets repairable by the inhabitants at large) incurred under the Private Street Works Act, 1892 (d), are a charge on the premises in respect of which they were incurred (e); but these charges require registration at the office of the local authority (f). A purchaser can therefore satisfy himself by searching that no such charge exists.

Requisition.

*Has X. Street been taken over by the local authority?
Is the vendor or are his solicitors aware of any expenses
having been incurred for sewerage or paving such street or
otherwise which have not yet been discharged?*

SUCCESSION DUTY.

See DEATH DUTIES.

SUPERFLUOUS LANDS.

Lands acquired under the provisions of the Lands Clauses Consolidation Act, 1845 (g), or any special Act incorporating

| | |
|---|---|
| (a) <i>Egg v. Blayney</i> , 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. 65; 36 W. R. 893; 52 J. P. 517. | 59 L. J. Q. B. 113; 62 L. T. 117; 38 W. R. 236. |
| (b) <i>Ibid.</i> | (d) 55 & 56 Vict. c. 57, s. 6. |
| (c) <i>Reg. v. Vice-Registrar of Office of Land Registry</i> , 24 Q. B. D. 178; | (e) <i>Ibid.</i> s. 13 (1). |
| | (f) <i>Ibid.</i> s. 13 (2). |
| | (g) 8 & 9 Vict. c. 18, |

that statute by the promoters of an undertaking, but which are not required for the purpose of such undertaking, are subject to peculiar provisions by which the promoters of the undertaking are required to absolutely sell all such superfluous lands within the period prescribed in the special Act, or, if no period be prescribed, within ten years after the time limited by the special Act for the completion of the works; and, in default of such sale, the superfluous land vests in the adjoining owners in proportion to the extent of their lands respectively adjoining it (*h*). Land is not deemed superfluous if there is any expectation of its being eventually required for the purposes of the undertaking (*i*): on the other hand, the mere fact of a sale is not conclusive evidence that the lands conveyed are superfluous (*k*). As to the mode of dividing the superfluous lands between the adjoining owners, see *Moody v. Corbett* (*l*).

Before the promoters sell any superfluous lands they must, unless the lands are situate within a "town," or are lands built upon or used for building purposes, first offer to sell them to the person entitled to the lands from which they were originally severed, or, if such person refuse to purchase or cannot, after diligent inquiry, be found, then they must offer to sell the lands to the several persons not being under disability (*m*) whose lands immediately adjoin the lands proposed to be sold, the offer being made to those persons in succession in such order as the promoters think fit (*n*). A contract for sale is, however, valid, if it be entered into before the offer has been made to sell to a person having the right of pre-emption; but the conveyance cannot be executed until after the offer has been made (*o*).

(*h*) 8 & 9 Vict. c. 18, s. 127.

(*i*) *Betts v. Great Eastern Rail. Co.*, 3 Ex. D. 182; 47 L. J. Ex. 461.

(*k*) *Hobbs v. Midland Rail. Co.*, 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. 270; 30 W. R. 516; *Dunhill v. North Eastern Rail. Co.*, (1896) 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231.

(*l*) L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; 14 L. T. 568; 14 W. R. 737.

(*m*) *London & South Western Rail. Co. v. Blackmore*, L. R. 4 H. L. 610; 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305.

(*n*) 8 & 9 Vict. c. 18, s. 128.

(*o*) *London & Greenwich Rail. Co. v. Goodchild*, 13 L. J. Ch. 224; 8 Jur. 455; 3 Rail. Cas. 507.

Persons having the right of pre-emption must exercise it within six weeks of the offer, and on their refusal of the offer, or the expiration of six weeks, their right of pre-emption ceases (*p*). If they accept the offer and the parties differ as to the price, the price must be ascertained by arbitration (*q*).

A declaration in writing before a justice by a disinterested person that an offer was made and refused, or was not accepted within six weeks, or that the persons entitled were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of the lands in question, is in all Courts sufficient evidence of the facts stated in it (*p*).

Requisitions.

1. *The railway company must furnish the evidence referred to in sect. 129 of the Lands Clauses Consolidation Act, 1845, to show that the lands have been offered to the persons specified in the Act, and that such persons have not accepted the offer.*

2. *Some evidence must be furnished to satisfy the purchaser that the land which the company is selling is not required for the purposes of the undertaking. If such land were not superfluous its sale would be ultra vires and void.*

SURRENDER.

See COPYHOLDS—LEASEHOLD PROPERTY.

TACKING OF MORTGAGES.

Tacking is the right of a mortgagee having the legal estate to refuse to be redeemed except upon the terms that he is paid the whole of the moneys which he has advanced upon the security of the property. It does not apply to moneys

(*p*) 8 & 9 Vict. c. 18, s. 129.

(*q*) *Ibid.* s. 130.

advanced by a mortgagee with notice of a prior equitable mortgage, but it does apply where the mortgagee, after having advanced money without notice of a prior incumbrance, obtains a transfer of the first mortgage and a conveyance of the legal estate after he has notice of the second mortgage.

Tacking was abolished by the Vendor and Purchaser Act, 1874 (s), but revived by the Land Transfer Act, 1875 (t). The period during which priority could not be obtained by tacking was between the 7th August, 1874, and the 31st December, 1875, inclusive. It has been entirely abolished in Yorkshire after the 31st December, 1884 (u).

It is advisable for a second mortgagee, immediately on advancing his money, to give notice to the first mortgagee that the second mortgage has been effected. The notice should, where the consent of the first mortgagee can be obtained, be endorsed on the mortgage. This will prevent any further advances made by the first mortgagee having priority over the second mortgage; but the second mortgagee will still be liable to the risk of the mortgagor making a third mortgage, and the third mortgagee obtaining a transfer of the legal estate: there does not appear to be any way of effectually guarding against this danger.

Requisitions.

1. *Can the mortgagor obtain the consent of the first mortgagee to notice of the proposed second mortgage being indorsed on the first mortgage in order to minimise the risk of the second mortgagee being excluded by tacking?*

2. *The mortgagor will be required to covenant with the proposed second mortgagee to give notice of the second mortgage to any subsequent mortgagee before raising any further loans on the property.*

(s) 37 & 38 Vict. c. 78, s. 7.

(t) 38 & 39 Vict. c. 87, s. 129.

(u) 47 & 48 Vict. c. 54, s. 16.

TAXES.

See LAND TAX—RATES AND TAXES.

TENANTS BY ENTIRETIES.

A tenancy by entireties is that form of joint ownership which was created by a limitation before 1883 to husband and wife after their marriage. Such a limitation, since the 1st January, 1883, when the Married Women's Property Act, 1882 (*x*) came into operation, creates a joint tenancy, but this does not affect the rule, that if land be limited to husband and wife and a third person, the husband and wife are entitled to one moiety only and the third person to the other moiety (*y*); but a slight difference of language is sufficient to prevent the application of the rule (*z*). And where a husband and wife were joint tenants before marriage they still remained so after marriage, although they married before the Married Women's Property Act, 1882 (*a*), came into operation.

When husband and wife are tenants by entireties, a decree absolute for dissolution of marriage makes them joint tenants (*b*).

The principal peculiarities of tenancy by entireties are—

- (1) There can be no partition.
- (2) The survivor is absolutely entitled.
- (3) Only the husband and wife together can dispose of the land.

Where husband and wife convey an estate to which they are entitled as tenants by entireties, the wife should acknowledge the deed as required by the Fines and Recoveries Act,

(*x*) 45 & 46 Vict. c. 75.

(*y*) *Re Jupp, Jupp v. Buckwell*, 39 Ch. D. 148; 57 L. J. Ch. 774; 59 L. T. 129; 36 W. R. 712.

(*z*) *Re Dixon, Byram v. Tull*, 42 Ch. D. 306; 61 L. T. 718; 38

W. R. 91.

(*a*) 45 & 46 Vict. c. 75; Co. Litt. 187 b.

(*b*) *Thornley v. Thornley*, (1893) 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311.

§16 TENANTS BY ENTIRETIES—TENANTS IN COMMON.

1833 (c). Prior to the 1st January, 1834, the conveyance could only be validly effected by levying a fine or suffering a recovery.

See ACKNOWLEDGMENTS—FINES AND RECOVERIES—
JOINT TENANTS.

Requisition.

Mr. and Mrs. A. B., the proposed mortgagors, appear to have taken as tenants by entireties and to be entitled only to one moiety of the property offered as security and not to two-thirds as stated in the particulars of the security. Either the concurrence of the owner of the other moiety must be obtained, or the amount to be advanced will be reduced proportionately.

TENANTS IN COMMON.

Between tenants in common there is no survivorship. This is the most important practical distinction between this kind of tenancy and joint tenancy, though they differ in some other respects; thus, equality of interest is not necessary between tenants in common and they may take different estates.

If the land taken by joint owners is not limited to them in unequal shares or for different estates, some words are necessary to indicate that such owners are to take as tenants in common, otherwise they take as joint tenants. The following expressions have been held to have that effect:—

To A. and B. as tenants in common.

To A. and B. equally.

To A. and B. jointly and equally.

To A. and B. respectively.

To A. and B. share and share alike.

Between A. and B.

Among A., B., and C.

There is no such thing as tenancy or ownership in common at law in the case of a chose in action, *e.g.*, mortgage money; but although joint owners of a chose in action are joint tenants at law they may be in equity owners in common (*d*).

If a joint tenant during life alienates his share, the joint tenancy is as between the alienee and the remaining joint tenants converted into a tenancy in common.

See JOINT TENANTS.

Requisition.

The devise contained in the testator's will to A. B. and C. D. jointly and equally seems to have made them tenants in common and not joint tenants (e). As there was no survivorship on the death of C. D., a proper abstract must be delivered showing who are the person or persons now entitled to C. D.'s share.

TERMS, ATTENDANT AND SATISFIED.

The Satisfied Terms Act, 1845 (*f*), enacted that every term of years which, either by express declaration or construction of law, was attendant upon the inheritance or reversion of any lands on the 31st December, 1845, should on that day absolutely cease and determine, except that every such term should afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim, and demand as it would have afforded to him if it had continued to subsist, and for such purpose such term was to be considered in law and equity to be a subsisting term. Terms which, either by express declaration or construction of law, become attendant upon the inheritance or reversion of any lands after the 31st December, 1845, absolutely cease and determine upon their becoming attendant.

(*d*) See Williams' Principles of the Law of Personal Property, 14th edit., p. 390.

(*e*) *Ettricks v. Ettricks*, Amb. 656; *Perkins v. Baynton*, 1 B. C. C. 118.

(*f*) 8 & 9 Vict. c. 112.

The effect of this Act is to extinguish every term of years as soon as the purpose for which it was created is satisfied, and to render unnecessary any surrender of the term to the owner of the inheritance or reversion.

In the rare cases where a title commences before 1846, the abstract should deduce the title to satisfied terms up to the 31st December, 1845, in order to show that they were satisfied and attendant upon the inheritance or reversion at that date, and consequently came within the Act, while, with regard to terms becoming satisfied and attendant since that date, it is sufficient to deduce the title until the date of satisfaction.

A term limited to raise portions is satisfied as soon as it is ascertained that there can be no persons entitled to portions, and a mortgage term when the mortgage is paid off (g).

Requisitions.

1. *As the vendor is selling a term of years to be created for the purpose of securing portions, evidence must be given to show that the necessity for the raising of the portions exists.*

2. *The will is insufficiently abstracted so far as regards the term of 800 years, and a supplemental abstract must be delivered showing the trusts of this term. If the term was one for raising portions, what, if any, money has been actually raised thereunder?*

3. *The abstract should be supplemented by showing the devolution of the terms which became satisfied in 1840 from that date until the 31st December, 1845.*

TERMS, ENLARGEMENT OF LONG.

See LEASEHOLD PROPERTY.

(g) *Anderson v. Pignet*, L. R. 8 Ch. 180 ; 40 L. J. Ch. 310 ; 27 L. T. 740 ; 21 W. R. 150.

TITHE RENTCHARGE.

Under the Acts which have been passed for the commutation of tithes, a rentcharge, varying with the price of corn, has been substituted for tithes in kind.

All land is deemed to be subject to tithe; no mention therefore, need, in general, be made relating to it in particulars of sale. And a purchaser is not entitled to any compensation in respect of it, even though the tithe rentcharge should amount to two-thirds of the annual value of the land.

The abstract should disclose the amount of tithe rentcharge payable, and if this does not appear, inquiry should be made on the subject. It may also frequently be of service to the purchaser to inquire who is the tithe owner.

Two-thirds of the annual value may be taken as the extreme limit of tithe, as any amount greater than this may in general be remitted under the Tithe Act, 1891 (*h*).

When land is sold free from tithe rentcharge, the award of the Commissioners showing such to be the case should be called for by the purchaser.

The vendor of a portion only of a close subject to a single tithe rentcharge is under no obligation to apportion it, or procure its apportionment (*i*). In such a case it is for the purchaser to agree with the owner of the remaining portion of the close as to what proportion of the charge shall be borne by each. No such agreement will, however, affect the right of the tithe owner to distrain for the whole of his tithes on any portion of the original close; but by the Tithe Act, 1836 (*k*), power was given the Commissioners of Land Tax to alter the apportionment with the consent of two justices, and this power has been extended and modified by various subsequent statutes. By the Tithe Act, 1842 (*l*),

(*h*) 54 & 55 Vict. c. 8, s. 8.

(*i*) *Re Ebbworth and Tidy's Contract*,
42 Ch. D. 23; 58 L. J. Ch. 665; 60

L. T. 841; 37 W. R. 657; 54 J. P.
199.

(*k*) 6 & 7 Will. 4, c. 71, s. 72.

(*l*) 5 & 6 Vict. c. 54, s. 14.

the power is extended to cases in which lands charged with one entire rentcharge have become vested in several owners, and the Act gives the same power to the Tithe Commissioners without the necessity of applying to the justices, but no rentcharge is to be sub-divided so that any sub-division is less than 5s.; and by the Tithe Act, 1860 (*m*), extensive powers of alteration and redistribution of the rentcharge are given to the Tithe Commissioners who are now represented by the Board of Agriculture.

Requisitions.

1. *Will the vendor give full particulars as to any tithe rentcharge affecting the property, stating, amongst other things, to whom it is payable?*

2. *Has any apportionment been made of the tithe rentcharge payable in respect of the close of which the plot contracted to be sold formerly formed part? If so, what is the apportioned sum payable in respect of such plot? The award should be produced.*

3. *The property is stated in the particulars to be free from tithe. The award of the Commissioners to this effect must be produced.*

4. *It is stated in the particulars that the vendor is the tithe owner, and will release his right to tithes. A proper abstract of the vendor's title to the tithes must be furnished.*

TITLE.

See COVENANTS—LENGTH OF TITLE—ROOT OF TITLE.

TITLE DEEDS AND THEIR CUSTODY.

On a purchase of real or leasehold property, the purchaser is entitled to have all such deeds and documents of title as relate exclusively to the property purchased handed over on

(*m*) 23 & 24 Vict. c. 93, s. 11.

completion; but where the vendor retains any part of a real or leasehold estate to which any of the documents of title relate, he is entitled to retain such documents (*n*).

In ordinary cases the old practice of giving covenants for production and safe custody has been superseded by the provisions of the Conveyancing Act, 1881 (*o*), substituting an acknowledgment and undertaking. The statutory covenant provided by the Act only applies to documents in the possession of and retained by the covenantor; therefore, where a purchaser requires a covenant from A. for production of documents in the hands of B., who is unwilling or unable to give a covenant or an acknowledgment (*e.g.*, a mortgagee or trustee), an express covenant must still be given by A.; and such a covenant is also necessary in the case of land situate abroad.

It is now the almost universal practice to make use of the statutory provisions on behalf of trustees and mortgagees as well as of absolute owners omitting or qualifying in the case of the former the undertaking for safe custody.

With regard to the documents not in the possession of the vendor, but as to which he holds covenants for production, express or statutory, the benefit of such covenants will run with the land in favour of the purchaser (*p*). So also the benefit of an acknowledgment under the Conveyancing Act goes to the person (other than a lessee at a rent) claiming under the person to whom it is given (*q*), and although there is no corresponding provision as to the devolution of the benefit of an undertaking for safe custody, there can be little doubt that it would be held to run along with the acknowledgment.

Section 3 (6) of the Conveyancing Act, 1881, casting on a purchaser, in the absence of express contract, the expense of production of deeds and other documents not in the vendor's possession, does not affect the purchaser's right to have the

(*n*) Vendor and Purchaser Act, 627.
1874 (37 & 38 Vict. c. 78), s. 2, r. 5;
Re Williams and Duchess of Newcastle's
Contract, (1897) 2 Ch. 144; 66 L. J.
Ch. 543; 76 L. T. 646; 45 W. R.

(*o*) 44 & 45 Vict. c. 41, s. 9.
(*p*) *Barclay v. Raine*, 24 R. R.
206; 1 Sim. & St. 449.
(*q*) 44 & 45 Vict. c. 41, s. 9 (3).

TRAITORS.*See* CONVICTS, TRAITORS AND FELONS.**TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.**

Upon the death of one of two or more trustees, his estate devolves upon the remaining trustee or trustees. The devolution of the estate upon the death of a sole or sole surviving trustee depends upon the nature of the estate and the time of his death.

(1) His freehold trust estates—

- (i) If he died before the 7th August, 1874, vested in the person, if any, to whom he devised them, or, if he died intestate with regard to such estates, they devolved upon his heir-at-law.

[A general devise of real estates includes lands of which a testator was seised as trustee, unless a contrary intention appears (y).]

- (ii) If he died on or after the 7th August, 1874, and before the 1st January, 1876, and was a “bare trustee” seised in fee simple, the trust estate devolved upon his legal personal representative (z) until the 1st January, 1876, when it shifted to his heir-at-law or devisee, unless it had been previously disposed of by his legal personal representative (a).

- (iii) If he died on or after the 7th August, 1874, and before the 1st January, 1876, and was not a “bare trustee” seised in fee simple, the trust estate vested in the person (if any) to whom it was

(y) *Lord Braybroke v. Inskip*, 8 Ves. jun. 417; 7 R. R. 106; Tu. L. C. 322; *Bainbridge v. Lord Ashburton*, 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347.

(z) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 5.

(a) The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 48; *Christie v. Ovington*, 1 Ch. D. 279; 24 W. R. 204.

devised by his will, or if not so devised, then it devolved upon his heir-at-law.

- (iv) If he died on or after the 1st January, 1876, and before the 1st January, 1882, intestate as to the trust property and was a "bare trustee" seised in fee simple, and the land was not registered under the Land Transfer Act, 1875, the trust estate devolved upon his legal personal representative (b).
- (v) If he died on or after the 1st January, 1876, and before the 1st January, 1882, and was not a "bare trustee" seised in fee simple, or if (whether a bare trustee or not) he left a will disposing of the trust property, or if the land was registered under the Land Transfer Act, 1875, the trust estate vested in the person (if any) to whom it was devised, or if not so devised it devolved upon his heir-at-law.
- (vi) If he died on or after the 1st January, 1882, the trust estate devolved upon his legal personal representative, notwithstanding any testamentary disposition (c).

(2) His copyhold and customary trust estates—

- (i) If he died before the 1st January, 1882, devolved upon his customary heir until the admittance of the testator's devisee (if any) (d).

[The customary heir may himself be admitted, notwithstanding that the testator has disposed of the property by will; but in this case there should be a release of the devisee's right of admittance, or it should appear that the customary heir was admitted with the consent of the devisee (e).]

(b) The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 48.

(c) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.

(d) *Garland v. Mead*, L. R. 6 Q. B. 441; 40 L. J. Q. B. 179; 24 L. T. 421; 19 W. R. 1156.

(e) *Steele v. Waller*, 3 L. T. 74; 6 Jur. (N. S.) 1004; 28 Beav. 466.

- (ii) If he died on or after the 1st January, 1882, and before 16th September, 1887, and was tenant on the court rolls of any manor in respect of any trust estate, such estate devolved upon his legal personal representative until the 16th September, 1887, when it shifted to his customary heir or devisee, unless in the meantime a conveyance had been made by the personal representative (*d*).
 - (iii) If he died on or after the 16th September, 1887, and was tenant on the court rolls of any manor in respect of any trust estate, such estate devolved upon his customary heir or devisee in the same way as if he had died before the 1st January, 1882.
 - (iv) If he died on or after the 1st January, 1882, and was not tenant on the court rolls of any manor, the trust estate devolved upon his legal personal representative.
- (3) His leasehold trust estates have always devolved upon his legal personal representative.

Requisitions.

1. *A. B. having died after 1881, the devise in his will of trust estates to C. D. is of no effect, and the legal personal representative of A. B. must join in the conveyance.*

2. *How did X. Y. cease to be a trustee of the indenture of , 189 ? by death or retirement, or how otherwise? The usual evidence on the point should be supplied.*

3. *Why did not A. B. the second trustee of the settlement of 18 , join in the conveyance of 18 ? If he had died or retired previously to the last-mentioned date, his death should be stated on the abstract and proved in the usual way.*

(*d*) The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30; The Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45; *Re Mills' Trusts*, 37

Ch. D. 312; 40 Ch. D. 14; 57 L. J. Ch. 466; 58 L. T. 620; 60 L. T. 442; 37 W. R. 81.

TRUSTEES, SALES AND MORTGAGES BY.

Prior to the passing of Lord Cranworth's Act (*e*), new trustees could only be appointed in pursuance of a power contained in the instrument creating the trust, or by the Court. The provisions of that Act for the appointment of new trustees (*f*) have been repealed and re-enacted with slight alterations as from the 1st January, 1882 (*g*).

The statutory power now arises where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead or remains out of the United Kingdom for more than 12 months, or desires to be discharged, or refuses, or is unfit to act, or is incapable of acting; whereupon the person or persons nominated for the purpose of appointing new trustees by the instrument creating the trust, or if there is no such person able and willing to act, then the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing trustee, or of a sole trustee (*h*), may, by writing, appoint a new trustee or new trustees; the provisions relative to a continuing trustee include a refusing or retiring trustee if willing to act (*g*).

On a statutory appointment, the number of trustees may be increased (*i*), and where only one trustee was originally appointed, it is not obligatory to appoint more than one trustee; nor is it necessary to fill up the original number of trustees where more than two were originally appointed. A trustee, except where only one trustee was originally appointed, will not be discharged under the section from his trust unless there will be at least two trustees to perform the trust (*k*); and where there are more than two trustees, one of them may by deed declare that he is desirous of being discharged from the trust, and if his co-trustee and such other

(*e*) 28th August, 1860.

(*f*) 23 & 24 Vict. c. 145, s. 27.

(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31; Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 5; The Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 17; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 16; the Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 10, 47.

(*h*) *Re Shafto's Trusts*, 29 Ch. D.

247; 54 L. J. Ch. 885; 53 L. T. 261; 33 W. R. 728.

(*i*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31 (2), (6); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (a), (4).

(*k*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31 (3); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (c).

person, if any, as is empowered to appoint trustees by deed consent to the discharge of the trustee and the vesting in the co-trustees alone of the trust property, such trustee is discharged without a new trustee being appointed in his place (*l*). The Trustee Act, 1893, in re-enacting the provisions of the Conveyancing Acts with regard to the appointment of new trustees, extended such provisions to the case of a trustee desiring to be discharged from "all or any of the trusts or powers reposed in or conferred on him" (*m*).

On a statutory appointment of new trustees, a separate set may be appointed in respect of any part of the trust property held on trusts distinct from those relating to any other part of the trust property, and if only one trustee was originally appointed, then one separate trustee may be appointed (*n*), and that notwithstanding that no new trustees are to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees (*o*).

On the appointment of new trustees under the statutory power, the trust property may, without any conveyance or assignment, be vested in the new and continuing trustees as joint tenants by a declaration in the deed of appointment to the effect that any estate or interest in any land subject to the trust or the right to recover and receive any debt or other chose in action shall so vest (*p*); and a deed by which a retiring trustee is discharged may contain a like declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, and such declaration, without any conveyance or assignment, vests in the continuing trustees as joint tenants the estate, interest or right to which it relates (*q*).

(*l*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 32; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 11.

(*m*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (1).

(*n*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 5; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (b).

(*o*) Conveyancing Act, 1892 (55 &

56 Vict. c. 13), s. 6; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (b).

(*p*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (1); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (1).

(*q*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (2); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (2).

Neither the legal estate or interest in copyhold or customary land, nor land mortgaged to the trustees, nor shares, stocks, or other property transferable only in the books kept by a company or other body, or in manner directed by Act of Parliament, can be vested by declaration (*r*).

The statutory powers and provisions relating to the appointment of new trustees and the vesting of the trust property apply also to trustees for the purposes of the Settled Land Acts (*s*).

The High Court, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the Court, may make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there be no existing trustee (*t*); and in such case the Court may make an order vesting the land in any such person (*u*).

The trust property held by a trustee who is convicted of felony does not pass to the administrator of the convict's property (*v*), nor does that held by a bankrupt trustee pass to his trustee in bankruptcy (*x*); but the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony or is a bankrupt (*y*), and may make a vesting order vesting the felon's or bankrupt's trust property in the new and continuing trustees (*z*).

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (3); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (3).

(*s*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 17; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 47 (1).

(*t*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 32; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 9; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25.

(*u*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (1).

(*v*) 4 & 5 Will. 4, c. 23, s. 3; 13

& 14 Vict. c. 60, s. 46; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 48.

(*x*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 15; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (1).

(*y*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 32; Trustee Act, 1852 (15 & 16 Vict. c. 55), ss. 8, 9; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 147; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25 (1).

(*z*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1852 (15 & 16 Vict. c. 55), ss. 8 and 9; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 8, 9; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (1).

Where a person seised of or entitled in possession to land or to the receipt of its rents and profits, or having the powers of a tenant for life under the Settled Land Acts, is an infant, the powers of a tenant for life may be exercised on his behalf by the trustees of the settlement (*a*).

Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for any other land, or a partition is to be made with him of land, an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement stand in the place of and represent the tenant for life whose powers in respect of negotiating and completing the transaction they have in addition to their own powers as trustees (*b*).

Where a settlement contains powers of sale or other powers similar to those vested in the tenant for life by the Settled Land Acts, the consent of the tenant for life is, notwithstanding anything in the settlement, necessary to the exercise by the trustees of such powers (*c*); but the consent of one of two or more persons constituting the tenant for life is sufficient (*d*).

Any land or interest in land which is subject to a trust for sale and for the application of the money to arise from the sale or its income, or the income of the land until sale, or any part of that money or income, for the benefit of one or more persons for life or other limited period, is deemed to be settled land, and the person entitled to the income of the land or interest until sale is deemed to constitute the tenant for life; therefore, such person can, notwithstanding the trust, exercise the powers of a tenant for life under the Settled Land Acts (*e*); but on the other hand the consent of the tenant for life is not necessary to enable the trustees to

(*a*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (10) (1), 59, 60.

(*b*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 12.

(*c*) Settled Land Act, 1882 (45 &

46 Vict. c. 38), s. 56.

(*d*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6 (2), (3).

(*e*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 63.

sell, unless so provided by the settlement (*f*). After the 2nd July, 1884, in such a case the tenant for life cannot exercise his powers without the leave of the Court, and after such leave the trustees cannot exercise any power to which the leave extends. The order of the Court giving such leave may be registered against the trustees as a *lis pendens* under the description of "the trustees for the purposes of the Settled Land Act, 1882," and persons dealing with them are not affected by the order unless so registered (*g*); consequently, if a purchaser on searching finds no order registered, he may safely accept a title from the trustees.

Where the instrument creating a trust gives a power of sale by the trustees with the consent of the tenant for life, and such tenant for life encumbers or parts with his life estate or becomes bankrupt, the consent of the tenant for life remains necessary; but a good title cannot be made without the concurrence also of persons who have obtained interests by such events (*h*).

Trustees for sale must carry out the directions contained in the instrument creating the trust, if not illegal. Thus, if the trust be for sale on the death of the tenant for life, they cannot sell during his lifetime (*i*).

If trust property is sold at a gross undervalue, a breach of trust is committed which affects the title in the hands of the purchaser (*k*).

The Court will not enforce specific performance of a contract which amounts to a breach of trust (*l*); but trustees who have purchased property in breach of trust can make a title to a purchaser on a re-sale.

A trust for sale may continue exercisable by trustees without the concurrence of the beneficiaries, even when such beneficiaries are adult and absolutely entitled.

(*f*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6 (1), (3).

(*g*) *Ibid.* s. 7.

(*h*) *Re Beddingfield and Herring*, (1893) 2 Ch. 332; 62 L. J. Ch. 430; 68 L. T. 634; 41 W. R. 413; 3 R. 483.

(*i*) *Re Bryant and Barningham*, 44

Ch. D. 218; 59 L. J. Ch. 636; 63 L. T. 20; 38 W. R. 469.

(*k*) *Stevens v. Austen*, 30 L. J. Q. B. 212; 3 L. T. 810; 7 Jur. (N. S.) 873; 3 E. & E. 685.

(*l*) *Wood v. Richardson*, 5 Jur. 623; 4 Beav. 174, at p. 176.

Where, in a deed or will, there is a limitation of property to one for life, and upon his death upon trust to divide amongst certain persons with power to the trustees to sell, such power of sale may be exercised within a reasonable time after the death of the tenant for life, and after the property has become absolutely vested in possession, provided such appears by the instrument to have been the intention. A power of sale, however, is exercisable after the property has become absolutely vested in possession only if, on the construction of the particular instrument, it appears to be the intention of the settlor or testator that it should be then exercised (*m*).

Where an action is pending for the execution of a trust, the sanction of the Court to any proposed sale by trustees is necessary (*n*).

Where a purchaser contracts to purchase property from trustees, he cannot be compelled to accept a conveyance from the tenant for life under the powers of the Settled Land Acts (*o*).

Where trustees, under an instrument coming into operation after the 31st December, 1881, have a trust for or power of sale in the absence of a contrary intention expressed in the instrument creating the trust or power, they may sell or concur with any person in selling all or part of the property, subject or not to prior charges, by public auction or private contract subject to such conditions as they think fit (*p*); and trustees for sale under instruments coming into operation prior to the 1st January, 1882, but after the 28th August, 1860, had almost identical powers under Lord Cranworth's Act (*q*).

The insertion of conditions of an unnecessarily depreciatory nature were formerly a ground of objection to a title through trustees; but since the 24th December, 1888, no sale by a

(*m*) *Biggs v. Peacock*, 20 Ch. D. 200; 51 L. J. Ch. 555; 46 L. T. 582; 30 W. R. 605; *Re Tweedie and Miles*, 27 Ch. D. 315; 54 L. J. Ch. 71; 33 W. R. 133.

(*n*) *Walker v. Smalwood*, Amb. 676.

(*o*) *Re Bryant and Barningham*, 44 Ch. D. 218; 59 L. J. Ch. 636; 68 L. T. 20; 38 W. R. 469.

(*p*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 35; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 13.

(*q*) 23 & 24 Vict. c. 145, s. 35.

trustee can be impeached by any beneficiary on this ground, unless it appears that the consideration for the sale was thereby rendered inadequate; and no sale by a trustee can, after the execution of the conveyance, be impeached as against the purchaser on this ground, unless it appears that the purchaser was acting in collusion with the trustee (*r*).

Trustees, to whom an estate is devised for the whole estate of the testator therein by will coming into operation after the 12th August, 1859, charged with debts or legacies, but without any provision for raising them, have, under Lord St. Leonards' Act, power to sell or mortgage; but they have not power to do so if the estate is devised to persons beneficially in fee or in tail (*s*).

From the 28th August, 1860, to the 31st December, 1882, inclusive, trustees had power, under Lord Cranworth's Act, to mortgage for the purpose of raising money required for equality of exchange or for renewal of a lease (*t*). This provision was repealed by the Settled Land Act, 1882 (*u*); but by the Trustee Act, 1888, a similar power for the purpose of renewing a lease is given to trustees whenever their trusts were created (*x*).

Trustees, as persons authorized or required to pay estate duty, appear to have power under the Finance Act, 1894, to raise the amount of duty, and interest, and expenses by sale or mortgage of, or a terminable charge on, the property or any part of it (*y*).

Before the 1st January, 1882, persons paying money to trustees and having notice of the trust were bound to see to its application, except—

- (1.) Where the instrument creating the trust provided otherwise.
- (2.) Where the receipt was given between the 1st January,

(*r*) Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 3; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 14.

(*s*) 22 & 23 Vict. c. 35, ss. 14—18; *Re Wilson, Pennington v. Payne*, 54 L. T. 600; 34 W. R. 512.

(*t*) 23 & 24 Vict. c. 145, s. 9.

(*u*) 45 & 46 Vict. c. 38, s. 64 (1).

(*x*) 51 & 52 Vict. c. 59, ss. 11, 12 (1); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 19 (2), (3).

(*y*) 57 & 58 Vict. c. 30, ss. 8 (4), 9 (5).

1845, and the 30th September, 1845, inclusive, unless the contrary was expressly declared by the instrument creating the trust (s).

(3.) Where the instrument creating the trust was dated subsequently to the 27th August, 1860 (a), or, in the case of purchase or mortgage money, subsequently to the 12th August, 1859 (b), and the contrary was not expressly declared by the instrument creating the trust.

(4.) In certain cases in which the intention to cast upon persons paying money the duty to see to its application could not be reasonably inferred, *e. g.*, where the trust was for payment of debts generally (c). This exception did not, however, apply to trusts for payment of specified debts.

As will be seen from the exceptions stated above, trustees of instruments creating trusts after the 12th August, 1859, could give good receipts for any purchase or mortgage money, unless a contrary intention was declared by the instrument creating the trust (b); and after the 27th August, 1860, trustees had somewhat more extensive powers of doing so (d); and now trustees can give a good receipt for money paid to them after the 31st December, 1882, irrespective of the date of the instrument creating the trust, such receipt exonerating the person paying from seeing to the application of the money (e). A purchaser need not therefore now inquire as to a receipt clause, or whether the property has become absolutely vested, so as to put an end to the efficacy of a receipt clause; but, nevertheless, inasmuch as on some titles questions may arise which depend upon the power of trustees, prior to the 1st January, 1882, is still of importance, and has therefore been given above.

(s) 7 & 8 Vict. c. 76, s. 10; 8 & 9 Vict. c. 106, s. 1.

(a) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 29.

(b) Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 23.

(c) *Elliot v. Merriman*, Barn. Ch. 78; 2 W. & T. 896.

(d) Lord Cranworth's Act (23 & 24 Vict. c. 145), ss. 29, 34.

(e) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 36; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20.

All the trustees must join in giving a receipt as well as in the conveyance, in order to exonerate the purchaser from seeing to the application of the purchase-money (*f*).

See AGENTS—SETTLED LAND—VESTING DECLARATIONS AND ORDERS—WILLS.

Requisitions.

1. *There does not appear to be any trust for sale in the indenture of 18 . Unless an order of the Court for sale is obtained, all the debenture-holders and the company must join in the conveyance.*

2. *It appears that an action for the execution of the trusts of the settlement is pending. Has the sanction of the Court to the proposed sale been obtained?*

3. *The consent in writing of the tenant for life to the proposed sale must be produced as required by sect. 56 of the Settled Land Act, 1882.*

4. *A. B., the tenant for life, whose consent to the sale by the trustees is required by the settlement, has, it is understood, been adjudicated a bankrupt. The consent of his trustee in bankruptcy, as well as of A. B., must be obtained by the vendors' solicitors and produced.*

5. *The power of sale is given only to the trustees and the survivor of them. The purchaser cannot accept a title from the executor of such survivor.*

UNCONSCIONABLE BARGAIN.

See EXPECTANT HEIRS.

(*f*) *Boursot v. Savage*, L. R. 2 Eq. 134; 14 L. T. 299; 14 W. R. 565.

UNDERLEASE.*See* LEASEHOLD PROPERTY.**UNDERTAKING FOR SAFE CUSTODY.***See* TITLE DEEDS.**USES.**

Before the Statute of Uses, where lands were given to any person to the use of another, the latter took an estate recognized by the Court of Chancery, and similar to a modern equitable estate, but took no estate at law. By the Statute of Uses (*h*) it was enacted, that where any person or persons should stand or be seised of any lands, tenements, or other hereditaments to the use, confidence, or trust of any other person or persons, such person or persons that have such use, confidence, or trust should stand and be seised and deemed to be in lawful seisin and possession of the same lands, tenements, and hereditaments in the like estates as they have in the use, trust, or confidence.

The intention of the statute was to prevent the legal estate and the beneficial interest being in different persons, but this intention was defeated by the Court of Chancery, which held that the statute only executed the first use, or, as it was expressed, that there could not be “a use upon a use” (*i*), but recognized and enforced as an equitable estate or interest any use or trust limited or declared upon or out of the first use (*k*).

The statute enabled the legal estate to be dealt with in the way of creating future estates and otherwise in manner not permitted by the strict rules of the old common law, for by

(*h*) 27 Hen. 8, c. 10.(*i*) 2 Blackstone, 345; *Tyrell's Case*, Dyer, 155 a; Tu. L. C. 289.(*k*) *Cooper v. Kynock*, L. R. 7 Ch.

398; 41 L. J. Ch. 296; 26 L. T. 566; 20 W. R. 503.

force of the statute, uses, as and when they arise or spring into being, become legal estates or interests.

The statute speaks of one person being seised to the use of another. When, therefore, the person seised to the use is the same person as the *cestui que use*, the conveyance operates under the common law and not under the statute, except, according to Lord Bacon (*l*), "there be a direct impossibility or impertinency for the use to take effect by the common law." "If the estate is changed the use is executed by the statute" (*m*).

In a grant to uses the statute cannot execute the use for any greater estate than that given to the grantee; if, therefore, the estate given to the grantee to uses be smaller than that expressed to be limited to the *cestui que use*, the legal estate taken by the latter will be cut down accordingly (*n*). On the other hand, if the grantee to uses and the *cestui que use* are the same, and there is any discrepancy between the limitation in the *habendum* and that in the declaration of uses, the whole limitation may be looked at to ascertain the estate intended to be limited, and a specific limitation overrides and controls a general limitation (*o*).

The statute requires a person to be *seised* to the use of another. Uses declared out of a copyhold or leasehold interest are therefore not executed by the statute, but confer merely equitable interests.

Resulting Use.—If in a voluntary conveyance no use is declared, or the uses declared do not exhaust the estate given to the grantee, a use is implied and executed by the statute in favour of the person who conveys, and the whole estate, or the part as to which no use is declared, as the case may be, goes back or *results* to the person conveying.

(*l*) Reading upon the Statute of Uses, 2nd edit. p. 65.

(*m*) Per Grove, J., *Webster v. The Overseers of Ashton-under-Lyne*, *Orme's Case*, L. R. 8 C. P. 281, 289; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

(*n*) *Jenkins v. Young*, Cro. Car. 230; *Orme's Case*, L. R. 8 C. P. 281, 292; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

(*o*) *Orme's Case*, L. R. 8 P. C. at p. 300; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

Any consideration, however small, in a conveyance containing no declaration of uses is sufficient to prevent the use resulting.

Again, even in a conveyance for value, where the uses declared or raised by implication from the nature of the transaction in favour of persons other than the grantor do not exhaust the estate granted, there will be a resulting use in favour of the grantor.

In a will, if property be devised to uses, the legal estate will follow the uses declared either by virtue of, or by analogy to, the Statute of Uses, but the strict application of the principles applicable to a grant to uses may be relaxed in favour of a construction which will give effect to what appears by the will to be the intention of the testator (*p*).

Requisition.

The voluntary conveyance of 18 , under which the vendor shows title does not properly declare the use of the premises conveyed. There appears, therefore, to have been a resulting use in favour of the settlor who, or whose representative, must join in the conveyance.

VENDOR AND PURCHASER—BANKRUPTCY AND DEATH OF, BEFORE COMPLETION.

A contract for sale of real property is not discharged by the bankruptcy of either vendor or purchaser. The benefit of the contract in either case passes to the trustee in bankruptcy, who stands in the place of the bankrupt, but the trustee has power, if the contract is unprofitable, to disclaim it (*q*). Subject to this power to disclaim, the purchaser may, where the vendor is the bankrupt, tender the purchase-money

(*p*) *Cunliffe v. Brancker*, 3 Ch. D. 393; 46 L. J. Ch. 128; 35 L. T. 578; *Cooper v. Kynock*, L. R. 7 Ch. 398; 41 L. J. Ch. 296; 26 L. T.

566; 20 W. R. 503.

(*q*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55 (1).

and require the trustee to complete the contract. The trustee in the vendor's bankruptcy can compel the purchaser to pay the purchase-money, and take a conveyance of the estate. If, on the other hand, the purchaser becomes bankrupt, and the trustee in his bankruptcy does not disclaim, the vendor has a lien on the estate for the unpaid purchase-money, and may value his security and prove for the deficiency (if any) in the purchaser's bankruptcy, while the trustee in the purchaser's bankruptcy can compel a conveyance on payment of the purchase-money in full.

The death of the vendor or purchaser before the conveyance or surrender, or even before the time agreed upon for completing the contract, is immaterial. If the vendor dies before payment of the purchase-money, the right to it devolves upon his executors, and the purchase-money forms part of his personal estate (*r*). But before the 1st January, 1881, the concurrence of the heir-at-law or devisee of the vendor was necessary to convey the legal estate. Where, however, the vendor dies on or after that date, and there is a subsisting contract enforceable against his heir or devisee for the sale of any freehold estate or interest, his personal representative has power to convey the land for all the estate and interest which was vested in the vendor (*s*).

On the death before completion of the purchaser his heir-at-law or devisee becomes equitably entitled, and formerly, on the death of the purchaser of land in fee before completion, the heir-at-law or devisee, as the case might be, was *primâ facie* entitled to insist upon the payment of the purchase-money out of the personal estate, but, by Locke King's Amendment Act (*t*), in the absence of any contrary intention signified by will, deed, or other document, lands of testators dying after the 31st December, 1854, and by the further Amendment Act (*u*), of intestates dying after the 31st December, 1877, are taken subject to any lien for unpaid purchase-

(*r*) Sug. 177.

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 4.

(*t*) Real Estate Charges Act, 1867 (30 & 31 Vict. c. 69), s. 2.

(*u*) Real Estate Charges Act, 1877 (40 & 41 Vict. c. 34).

money. The last-mentioned statute extended the rule to leasehold estates.

On the sale of a life estate the loss occasioned by the death of the *cestui que vie* after the date of the contract must be borne by the purchaser (x).

See TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Requisitions.

1. *It is understood that the vendor has become bankrupt since the date of the contract; the concurrence of the trustee in bankruptcy must be obtained.*

2. *The vendor having died since the date of the contract, a further abstract must be delivered showing who are his legal personal representatives.*

VERIFICATION OF ABSTRACT.

Certain expenses in connection with the investigation of title which apart from special contract were formerly borne by the vendor, are now, in the absence of special stipulation, cast on the purchasers. These are the expenses of—

- (1) The furnishing of such covenants for production as the purchaser can and shall require. But the vendor bears the expense of perusal and execution by himself and by necessary parties other than the purchaser (y). This now applies to acknowledgments and undertakings under the Conveyancing Act, 1881.
- (2) The production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of Court, court rolls, deeds, wills, probates, letters of administration, and other documents not in the vendor's possession (z).

(x) Sug. 296.

(y) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2 (4th).

(z) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6).

(3) Journeys incidental to such productions and inspections (*a*).

(4) Searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and copies or abstracts of, or extracts from the documents mentioned in (2) (*a*).

(5) Making a copy of any documents retained by the vendor (*a*).

The provisions of the Conveyancing Act referred to above do not enable a vendor to cast upon the purchaser the expense of procuring and making an abstract of any deed not in the vendor's possession which forms part of a 40 years' title or such other title as, by contract, he is bound to show, and the vendor must, at his own expense, furnish such abstract (*b*).

VESTING.

The term vest is used in several different senses—

(i) As applied to legal estates in land, "vesting" signifies the acquisition of an actual estate in the land whether in possession or in remainder.

(ii) As applied to future interests other than legal remainders, the word "vested" signifies not subject to a condition precedent. The rules for determining what is and what is not a condition precedent differ according as the subject-matter of the gift is real estate, money charged on land or personal estate. They are contained in a large number of cases which are collected in Theobald on Wills (*c*). When such a future interest is subject to a condition subsequent instead of precedent it is said to be vested subject to be divested.

(iii) "Vested" is, again, sometimes used as an equivalent for transmissible on death (*d*).

(*a*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6). 281; 33 W. R. 737.

(*b*) *Re Johnson and Tustin*, 30 Ch. D. 42; 54 L. J. Ch. 889; 53 L. T.

(*c*) 4th edit., pp. 452—474.

(*d*) See Roper on Legacies, Vol. I., p. 550, 4th edit.

To determine whether or not shares or legacies are vested in the last sense is not infrequently of importance in the case of gifts by will to a class; the rules may shortly be stated as follows:—

- (1) In the case of an immediate devise or bequest to a class, those *in esse* at the death of the testator are entitled, and members of the class coming into existence after his death are excluded (*e*). If none of the class are *in esse* at the death of the testator all subsequently born are (subject to the rule against perpetuities) entitled.
- (2) In the case of a reversionary devise or bequest to a class, those *in esse* at the death of the testator take vested interests, but such interests are liable to be divested to such an extent as may be necessary to let in all members of the class who come into existence after the death of the testator and before the period of distribution (*f*).
- (3) Where there is a devise or bequest to a class and the share of each member of the class is made to vest or become payable when a specified event happens, the period of distribution is when the first member of the class becomes entitled to his share, and members of the class coming into existence after that period are excluded (*g*).

A devise or bequest to persons born at a given period includes a person *en ventre sa mère* at that period and born afterwards (*h*).

Requisitions.

1. *The interest under his father's will offered as security by the mortgagor does not vest until he attains 25, when it is also payable. The security will not, therefore, be accepted*

(*e*) *Singleton v. Gilbert*, 1 Cox, 68; 1 B. C. C. 542; *Viner v. Francis*, 2 R. R. 29; Tu. L. C. 417; 2 Cox, 190.

(*f*) *Devisine v. Mello*, 1 B. C. C. 537; *Browne v. Hammond*, Johns. 210, at p. 212, n. (*a*).

(*g*) *Whitbread v. Lord St. John*, 10 Ves. jun. 152; 7 R. R. 366.

(*h*) *Trower v. Butts*, 1 L. J. (O. S.) Ch. 115; 24 R. R. 164; 1 Sm. & St. 181.

unless accompanied by a policy of assurance, in an office to be approved by the mortgagee, against the death of the mortgagor before the date referred to.

2. *Under the devise by the testator to his brother and sisters of his interest in Blackacre expectant on the death of his father, the brothers and sisters of the testator who came into existence subsequently to his death, but before the death of his father, are entitled to shares. The abstract should therefore show whether or not there were any such brothers or sisters of the testator (i).*

VESTING DECLARATIONS AND ORDERS.

In a deed executed after the 31st December, 1881, appointing a new trustee of a settlement of whatever date, a declaration to the effect that any estate or interest (other than the legal estate or interest in copyhold or customary land, or land conveyed by way of mortgage) in any land subject to the trust shall vest in the new trustees, vests such estate or interest without any conveyance in such new trustees as joint tenants. And where a deed by which a retiring trustee is discharged contains such a declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, such declaration vests the estate or interest without conveyance in the continuing trustees alone as joint tenants (*k*).

A vesting order may be made by the High Court—

- (1) Where the Court appoints or has appointed a new trustee (*l*).
- (2) Where a trustee either solely or jointly entitled to

(i) See *Walker v. Shore*, 15 Ves. jun. 122, at p. 125; 10 R. R. 41.

(k) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12.

(l) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 8; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 147; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (i).

or possessed of any land is (a) an infant, or (b) out of the jurisdiction, or (c) cannot be found (*m*).

- (3) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land (*n*).
- (4) Where as to the last trustee known to have been entitled to or possessed of any land it is uncertain whether he is living or dead (*o*).
- (5) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead (*p*).
- (6) Where a trustee refuses to convey or release, or neglects to do so for 28 days after being required by a person entitled (*q*).
- (7) Where a mortgagee of land is an infant (*r*).
- (8) Where a mortgagee of land has died without having entered into possession, and the mortgage money has been paid to the person entitled, or he consents, then the Court may make a vesting order in the following cases :—

(i) When an heir or personal representative or devisee of the mortgagee is out of the jurisdiction or cannot be found.

(ii) Where an heir or personal representative or devisee of the mortgagee on demand made by a person entitled has stated in writing that he will not convey or does not convey the same for 28

(*m*) Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 7—12; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (ii).

(*n*) Trustee Act, 1853 (13 & 14 Vict. c. 60), s. 13; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (iii).

(*o*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 14; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (iv).

(*p*) Trustee Act, 1850 (13 & 14 Vict.

c. 60), s. 15; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30 (1); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (v).

(*q*) Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 2; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (vi).

(*r*) Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 7, 8; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 28.

days next after a proper deed for conveying the land has been tendered to him by the person so entitled.

- (iii) Where it is uncertain which of several devisees of the mortgagee was the survivor.
- (iv) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee, whether he is living or dead.
- (v) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee (*s*).
- (9) Where a judgment is given or order made for sale or mortgage of land, and the person entitled is a party to the action in which the order is made, or is otherwise bound by the judgment or order (*t*).
- (10) Where a judgment is given for specific performance of a contract concerning land, or for partition, or sale in lieu of partition, or exchange, or generally where any judgment is given for the conveyance of any land (*u*).

In all cases where a vesting order can be made, the Court may instead appoint a person to convey (*x*).

Where an order is made vesting copyholds with the consent of the lord of the manor, the land vests without surrender or admittance (*y*); and where an order is made appointing a person to convey copyholds, the lord of the manor, subject to

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30 (1); Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 19; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 29.

(*t*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 29; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 1; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 30; Trustee Act, 1894 (57 & 58 Vict. c. 10), s. 1. As to the practice of the Court as to binding

absent parties, see *May v. Newton*, 34 Ch. D. 347; 56 L. J. Ch. 313; 56 L. T. 140; 35 W. R. 363.

(*u*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 30; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 31.

(*x*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 20; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 33.

(*y*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 28; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 34 (1).

the customs and usual payments, is bound to complete the assurance as if the person in whose place an appointment is made were free from disability and had himself executed and done the requisite assurances and things (s).

All equitable interests of persons parties to the action or bound by the order for sale of properties sold under the Court are bound by such order; no vesting order of such interests is therefore necessary or proper (a); nor of course is it necessary for such persons to join in the conveyance, and a purchaser cannot insist on their concurrence even at his own expense (b).

An order of the Court is not now invalidated as against a purchaser on the ground of want of jurisdiction, or of concurrence, consent, notice or service, whether the purchaser has notice of any such want or not (c).

**See ACTION—ORDER—TRUSTEES, SALES AND
MORTGAGES BY.**

Requisitions.

1. *As the property of which C. D. was appointed a new trustee by the indenture of , 1896, comprised land conveyed by way of mortgage and copyhold land, sect. 12 of the Trustee Act, 1893, does not apply, and the declaration does not vest that property in C. D. The premises must therefore be conveyed to him in the usual way before he can make a title.*

2. *Under what circumstances is it proposed to apply for the vesting order mentioned in condition No. ? The vendor's solicitor should show that the circumstances are such as bring the case within one of the sections of the Trustee Act, 1893.*

(s) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 28; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 34 (2).

(a) *Re Williams' Estate*, 21 L. J. Ch. 437; 5 De G. & S. 515.

(b) *Webber v. Jones*, 6 Ir. Eq. R. 142; *Cole v. Sewell*, 17 Sim. 40.

(c) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70; *Re Hall-Dare's Contract*, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556.

VOLUNTARY CONVEYANCES.

See SETTLEMENTS.

WAIVER.

See LEASEHOLD PROPERTY.

WIFE.

See MARRIED WOMEN.

WILLS.

The subject of wills as affecting the investigation of title may be divided as follows :—

- (i) As to the validity of the will.
- (ii) As to what passes under it.
- (iii) As to the estate taken.
- (iv) As to what constitutes a charge on real estate of debts, legacies, and annuities.
- (v) As to other matters relating to wills.

(i) **As to the Validity of the Will.**

A will of immovable property must in general be executed in accordance with the *lex situs*, and a will of movable property in accordance with the *lex domicilii*; but a will of personality (including leaseholds) made out of the United Kingdom by a British subject dying after the 5th August, 1861, whatever his domicil, is well executed for the purpose of being admitted to probate if made according to the forms required by the law of the place where it was made, or of the place of domicil of the testator at the time when it was made,

or of the place of domicile of origin of the testator (*d*); and every will of personalty made in the United Kingdom by a British subject dying after that date is well executed if executed according to the forms required by the law of that part of the United Kingdom where the will was made (*e*).

In order, therefore, that a will executed after the 31st December, 1837, may effectually dispose of land of any tenure in England or Wales, it must, unless it be a will of leaseholds executed by a British subject dying after the 5th August, 1861, be executed in accordance with the requirements of the Wills Act, 1837 (*f*), viz.: (1) It must be in writing signed by the testator, or by some other person in his presence and by his direction; (2) the signature must be at the foot or end of the will as explained by the Wills Act Amendment Act, 1852 (*g*); (3) the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator. No special form of attestation is necessary. Soldiers in actual military service (*h*), and marines or seamen at sea (*i*), may still dispose of personal estate as they might before the Wills Act (*k*), that is to say, by unattested writing or by word of mouth.

Wills executed before the 1st January, 1838, in order to pass an estate in fee simple or *pur autre vie* in real property, had to be in writing and signed by the testator in the presence of three or four credible witnesses (*l*). No witnesses, nor even writing, were necessary in the case of copyhold or leasehold or other personal estate; but by the Statute of Frauds nuncupative wills of property of over 30*l.* value were required to be proved by

(*d*) Wills Act, 1861 (24 & 25 Vict. c. 114), s. 1.

(*e*) *Ibid.* s. 2.

(*f*) 7 Will. 4 & 1 Vict. c. 26, s. 9.

(*g*) 15 & 16 Vict. c. 24.

(*h*) *Re Phipp*, 2 Curt. 368; *Drummond v. Parish*, 3 Curt. 522; *White v. Rapton*, 3 Curt. 818; *Re Hill*, 1 Rob. E. 276; *Herbert v. Herbert*,

Deane, Ecc. Ca. 10.

(*i*) *In the goods of Saunders*, L. R. 1 P. & D. 16; 35 L. J. P. & M. 26; 13 L. T. 411; 14 W. R. 148; *Re Hayes*, 2 Cur. 338.

(*k*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 11.

(*l*) The Statute of Frauds (29 Car. 2, c. 3), s. 5.

three witnesses (*m*), and were subject to various other restrictions which are not now of sufficient practical importance in the investigation of title to necessitate their being set out here.

Since the Wills Act an infant has not been able to make a will either of realty or personalty; before that statute an infant could dispose of personal but not of real estate (*n*).

Prior to the Married Women's Property Act, 1882, a married woman could—

- (1) Make a will of property to which she was entitled to her separate use.
- (2) Make a will of personal property with the consent of her husband, which, however, could be revoked at any time before probate.
- (3) When an executrix, make a will appointing an executor for the purpose of continuing the representation of her testator.
- (4) Execute by will a power over real or personal property.
- (5) Make a will as a *feme sole* after a decree of judicial separation, or the making of a protection order under the Matrimonial Causes Act, 1857 (*o*).
- (6) Make a will as a *feme sole* where she was the wife of an alien enemy, a transported convict, an attainted person, or a person banished for life by Act of Parliament.

Under the Married Women's Property Act, 1882, a woman married on or after the 1st January, 1883, can dispose by will of any real or personal property which belongs to her at the time of marriage, or is acquired by or devolves upon her after marriage (*p*); and every woman married before the commencement of the Act can dispose by will of all real and personal property, her title to which has accrued on or after the 1st of January, 1883 (*q*). The Act gave a married woman power to dispose by will of property only of which she was seised or possessed while under coverture; consequently, it was held that her will made during coverture was not, unless it was re-executed after she became discover, effectual to dispose of

(*m*) 29 Car. 2, c. 3, s. 19.

(*n*) 2 Black. Com. 497.

(*o*) 20 & 21 Vict. c. 85, s. 21.

(*p*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 2.

(*q*) *Ibid.* s. 5.

property which she acquired after the coverture had come to an end (*r*); but now the will of a married woman who dies on or after the 5th December, 1893, made during coverture, is valid whether she is or is not entitled to any separate property at the time of making it, and such will does not require to be re-executed or re-published after the death of her husband (*s*).

Persons are unable to make wills while of unsound mind. The question whether or not a person is of unsound mind is a question of fact, and it seems that there is no presumption that a testator is sane until the contrary is proved (*t*).

By common law an alien could not hold any estate or interest in land, and therefore could not make a valid will of such property; but since the 6th August, 1854, he has been able to hold land for a lease not exceeding 21 years for the purpose of occupation or business (*u*), and from and since the 12th May, 1870, an alien can hold and dispose of real estate in all respects as a natural-born subject (*v*).

Neither traitors, felons, convicts, nor suicides are under any incapacity to make wills, nor do they ever appear to have been so, although formerly attainder of high treason or felony was a ground of forfeiture or escheat.

A will made or republished since the Wills Act came into operation (*x*) is revoked—

(1) By marriage, except it be a will made in exercise of a power of appointment, where the real or personal estate appointed would not, in default of appointment, pass to the testator's heir, customary heir, executor or administrator, or next of kin under the Statute of Distributions (*y*).

(2) By a subsequent will or codicil. If, however, a subse-

(*r*) *Re Price, Stafford v. Stafford*, 28 Ch. D. 709; 54 L. J. Ch. 509; 52 L. T. 430; 33 W. R. 521.

(*s*) Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 3; *Re Wylie, Wylie v. Moffat*, (1895) 2 Ch. 116; 64 L. J. Ch. 613; 43 W. R. 475; 13 R. 483.

(*t*) *Sutton v. Sadler*, 26 L. J. C. P. 284; 5 W. R. 880; 3 C. B. (N. S.)

87; *Cleare v. Cleare*, L. R. 1 P. & D. 655; 38 L. J. P. 81; 20 L. T. 497; 17 W. R. 627.

(*u*) 7 & 8 Vict. c. 66.

(*v*) The Naturalization Act, 1870 (33 & 34 Vict. c. 14).

(*x*) January 1st, 1838.

(*y*) The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 18.

quent testamentary paper is only partly inconsistent with one of an earlier date, the latter instrument is only revoked as to those parts which are inconsistent, and both of the papers are entitled to probate (z).

(3) By writing, declaring an intention to revoke the same and executed as a will.

(4) By burning, tearing, or otherwise destroying with the intention of revoking the same (a).

No acts other than these are effectual to revoke a will (b).

(ii) As to what passes.

All real and personal estate which a testator is entitled to at the time of his death may be disposed of by a will made or republished on or after the 1st January, 1838; and this power extends to copyhold and customary property, notwithstanding that it may not have been surrendered to the use of the will, and notwithstanding that the testator may not have been admitted, and notwithstanding the want of a custom enabling a tenant to dispose of the property by will (c). Contingent, executory, and other future interests in real or personal estate, and all rights of entry for conditions broken, and other rights of entry, can also be so disposed of (c). A will made since the date referred to *primâ facie* speaks from the date of the testator's death (d); and a general devise or bequest in such a will includes property over which the testator has a general power of appointment exercisable by will (e), and is effectual to execute a general power, even though the will was made before the power was created (f).

A general devise of real estate or lands includes copyholds not surrendered to the use of the will of a testator dying after the 11th July, 1815 (g); and a devise in a will made

(z) *Lemage v. Goodban*, L. R. 1 P. & D. 57; 35 L. J. P. & M. 28; 13 L. T. 508; 12 Jur. (N. S.) 32.

(a) The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 26.

(b) *Ibid.* s. 20.

The law as to revocation before the Wills Act will be found in 6 Cruise, Title 38, chap. vi.; Burton

on Real Property, s. 261; and 2 Black. Com. 376.

(c) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.

(d) *Ibid.* s. 24.

(e) *Ibid.* s. 27.

(f) *Stillman v. Weedon*, 18 L. J. Ch. 46; 12 Jur. 992; 16 Sim. 26.

(g) 55 Geo. 3, c. 192, s. 1.

or republished after the 31st December, 1837, of the lands of the testator or other general devise includes copyholds and leaseholds, unless a contrary intention appears (*k*).

A devise of lands, real estate, or other similar expression includes a reversionary interest in such estates (*l*). A general devise of lands includes land contracted to be purchased (*m*), but not the purchase-money of lands contracted to be sold (*n*).

In general, the death of a devisee or a legatee in the lifetime of the testator causes a lapse of the devise or bequest; but a devise by will, made or republished after the 31st December, 1837, of real estate for an estate tail to persons dying in the lifetime of the testator leaving issue living at the time of the death of the testator inheritable under such entail does not lapse (*o*); nor is there a lapse where a child or other issue, to whom any estate or interest in real or personal estate not determinable at or before his or her death is given, dies in the lifetime of the testator leaving children or other issue living at the time of the death of the testator (*p*); but where there is a gift by a testator to children as a class, the rule is that those members of the class who are, at his death, capable of taking take the whole, notwithstanding that some children may have died in the lifetime of the testator leaving issue who survive him, the gift being construed as showing an intention on the part of the testator that the class shall take so far as the law allows (*q*).

The Wills Act made beneficial gifts to attesting witnesses, their wives or husbands, void, but provided that such persons (*r*), and creditors (*s*) and executors (*t*), should be good witnesses.

A residuary devise by will made or republished after the

(*k*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 26.

(*l*) *Church v. Mundy*, 15 Ves. jun. 396; *Ford v. Ford*, 6 Ha. 486.

(*m*) *Acherley v. Vernon*, 3 Bro. P. C. 85; Com. 381; 9 Mod. 68.

(*n*) *Knollys v. Shepherd*, 1 J. & W. 499.

(*o*) Wills Act, 1837 (7 Will. 4 &

1 Vict. c. 26), s. 32.

(*p*) *Ibid.* s. 33.

(*q*) *Re Coleman and Jarrom*, 4 Ch. D. 165; 46 L. J. Ch. 33; 35 L. T. 614; 25 W. R. 137.

(*r*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 15.

(*s*) *Ibid.* s. 16.

(*t*) *Ibid.* s. 17.

31st December, 1837, includes estates comprised in lapsed and void devises (*u*). Both in wills made before and after the coming into operation of the Wills Act, a general bequest carries lapsed and void bequests.

As to wills executed before the 1st January, 1838, and not afterwards republished. For many years prior to the passing of the Wills Act it had, as has been stated (*ante*, p. 348), been possible to dispose by will of estates in fee simple (*v*), estates *pur autre vie* (*w*), copyhold estates by custom, and, in cases of persons dying on or after the 12th July, 1815, without a previous surrender to the use of the will (*x*). Leaseholds and other personal estate could be disposed of at common law (*y*).

Every devise of freeholds in a will made prior to the 1st January, 1838, spoke from the date of the will, and could not, therefore, pass any property answering to the description but acquired by the testator after its execution; but a codicil was held *primâ facie* to have the effect of republishing the will so as to make it speak from the date of the codicil, and include lands acquired after the date of the will and before the date of the codicil (*z*). A bequest of leaseholds by will was held *primâ facie* to speak as from the date of the will, but it depended upon the context of the whole will whether that general doctrine was to be applied or not (*a*).

(iii) As to the Estate taken.

A devise in wills made or republished after the 31st December, 1837, of any real estate without words of limitation passes the fee simple or other the whole estate or interest which the testator had power to dispose of unless a contrary

(*u*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 25.

(*v*) Statute of Wills (32 Hen. 8, c. 1); 34 & 35 Hen. 8, c. 5.

(*w*) Statute of Frauds (29 Car. 2, c. 3), s. 12.

(*x*) 55 Geo. 3, c. 192.

J.

(*y*) 2 Black. 491.

(*z*) *Acherley v. Vernon*, 3 Bro. P. C. 85; Com. 381; 9 Mod. 68; *Goodtitle v. Meredith*, 2 M. & Sel. 5.

(*a*) *James v. Dean*, 15 Ves. jun. 236; 8 R. R. 178.

intention appears (*b*); but this applies to the devise of an existing estate or interest, and not to an estate or interest which the testator by his will creates *de novo* (*c*). The law as to wills executed prior to the Wills Act, 1837, with regard to the estate taken is daily becoming of less importance for practical purposes connected with the investigation of title; the cases will be found collected in Jarman's Treatise on Wills (*d*).

Where there is a devise of real estate to trustees, the question not infrequently arises whether they take the legal estate in the property devised, or whether they merely serve as conduit-pipes to vest the estate in the person beneficially entitled. The rule on the subject before the Wills Act was, that if the trustees had any active duties to perform, such as to pay taxes or other outgoings, or to do repairs (*e*), or to pay the rent and profits to a beneficiary (*f*), they took so much of the legal estate as was necessary to enable them to carry out their duties (*g*); therefore, if the devise was to trustees in trust to pay the rents and profits to A. for life, or in trust to permit A. to receive the net rents and profits, and after his decease in trust for B., the trustees took the legal estate, but only during the life of A., and the estate taken by B. was a legal estate in remainder. If, however, the property was given to the trustees merely, to the use of or in trust for the person beneficially entitled, or upon trust to permit such person to receive the rents and profits, or in trust to pay or permit the beneficiary to receive the rents and profits, the whole legal estate was vested in the beneficiary (*h*).

The rule referred to above has been greatly modified as regards wills executed or republished on or after the 1st January, 1838, and where real estate is devised to trustees or executors they now take the whole estate of the testator, unless they are given, expressly or by implication, a definite

(*b*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 24.

(*c*) *Nichols v. Hawkes*, 22 L. J. Ch. 255; 10 Ha. 342.

(*d*) 5th ed., Vol. 2, p. 1131.

(*e*) *Shapland v. Smith*, 1 B. C. C. 75.

(*f*) *Barker v. Greenwood*, 4 M. &

W. 421.

(*g*) *Doe d. Player v. Nicholls*, 1 B. & C. 336; 1 L. J. (O. S.) K. B. 124; 25 R. R. 398; 2 Dowl. & Ry. 480.

(*h*) *Barker v. Greenwood*, 4 M. & W. 421; *Doe d. Leicester v. Biggs*, 11 R. R. 533; 2 Taunt. 109.

term of years, absolute or determinable, or an estate of freehold (i) ; and where real estate is devised to trustees without an express limitation of the estate to be taken, they take the whole estate of the testator, unless a beneficial interest in such real estate, or in its surplus rents and profits, be given to a person for life, and the purposes of the trust cannot continue beyond the life of such person (k).

It will be noticed that such a case as where real estate is devised to trustees and their heirs in trust to pay the rents and profits to A. for life, and after his death in trust for B., is not affected by either of the sections of the Wills Act containing the provisions referred to above, and the legal estate in such a case still vests in B. after the death of A., and again, if the devise be to trustees and their heirs upon trust to apply the rents and profits for A.'s maintenance during his minority, and when he attains the age of 21 in trust for A. for life, with remainders over, the legal estate vests in A. on his attaining 21, as the trustees are given by implication a definite term of years, and the beneficial interest is given to him for life, and the purposes of the trust cannot continue longer.

(iv) As to what constitutes a Charge on Real Estate of Debts, Legacies, and Annuities.

A charge of debts may not only be expressed but also implied ; thus, a general direction by a testator that his debts shall be paid charges them on the real estate (l) ; but not where after such general direction the testator has specified a particular fund for the purpose (m), nor where the direction is that the debts are to be paid by the executors unless they are devisees of the real estate (n). If they are such devisees, there is a charge on the real estate devised to them (o).

(i) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 30.

(k) *Ibid.* s. 31.

(l) *Graves v. Graves*, 8 Sim. 43.

(m) *Thomas v. Britnell*, 2 Ves. sen. 313.

(n) *Cook v. Dawson*, 30 L. J. Ch. 359 ; 4 L. T. 326 ; 9 W. R. 434 ; 3 De G. F. & J. 127.

(o) *Henvell v. Whitaker*, 3 Russ. 343.

Legacies (which term includes annuities) are not payable out of real estate unless the testator has by his will charged his real estate with their payment. Such a charge may arise by implication in the absence of an express charge, as where legacies are given and followed by a gift of the residue of the testator's real and personal estate in one mass (*p*), the testator's real estate is charged with the payment of legacies, although there be a specific devise of real estate intervening between the gift of the legacies and the residuary devise (*q*). A charge of legacies on the real estate, or even on all the real estate, is not sufficient to charge lands specifically devised (*r*); but if the charge be of debts and legacies, the legacies, as well as the debts, are a charge on such lands (*s*). A direction that real estate shall be sold and the proceeds form part of the residuary personal estate, charges the real estate with the debts and legacies (*t*).

(v) As to other Matters relating to Wills.

No obliteration, interlineation, or other alteration made in any will after its execution is valid unless executed in manner required for a will (*u*). The Court will accept any reasonable evidence to show whether interlineations were in a will at the time of its execution, and will not insist upon the oath of the attesting witnesses (*x*).

In cases of obliteration inspection by the aid of glasses is allowed, but not external evidence or other means to show what the original words were (*y*).

Statements of a testator, whether made before or after the execution of the will, are admissible to show what papers

(*p*) *Greville v. Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.

(*q*) *Francis v. Clemow*, 18 Jur. 223; 23 L. J. Ch. 288; 23 L. T. (O. S.) 57; 2 W. R. 308; 2 Eq. R. 426; Kay, 435.

(*r*) *Conron v. Conron*, 7 H. L. C. 168.

(*s*) *Re Emmerton, Maskell v. Farrington*, 7 L. T. 301; 11 W. R. 127; 8 Jur. (N. S.) 1198; 1 N. R. 37.

(*t*) *Bright v. Larcher*, 28 L. J. Ch. 837; 7 W. R. 658; 5 Jur. (N. S.) 1233; 3 De G. & J. 148.

(*u*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 21.

(*x*) *In the goods of Hindmarch*, L. R. 1 P. & D. 307; 36 L. J. P. & M. 24; 15 L. T. 391.

(*y*) *In the goods of Horsford*, L. R. 3 P. & D. 211; 44 L. J. P. & M. 9; 31 L. T. 553; 23 W. R. 211.

constitute the will (z) ; and statements made by him before the execution to show when alterations were made (a).

It has always been necessary that a will relating to leasehold or other personal estate should be proved, while until recently a will of realty required no proof to make it available as a document of title ; but now, inasmuch as real estate will, on a death after the 31st December, 1897, devolve on the legal personal representatives (b), it is apprehended that this distinction between real and personal estate will cease to exist, and a will of realty will require to be proved or letters of administration obtained, before real property devolving on the legal personal representatives can be effectually dealt with.

Probate or an office copy of a will proved in solemn form, or the validity of which has been declared in a contentious matter, is conclusive evidence of the validity and contents of the will in all proceedings affecting real estate (c) ; and even where a will is not proved in solemn form, probate or an office copy is evidence of the will, its validity and contents, as affecting realty, provided that ten days' notice before the trial be given by the party intending to adduce it, and the party receiving the notice does not within four days after such receipt give notice that he disputes its validity (d) ; but this does not preclude the party receiving the notice from disputing the competency of the testator or the validity of the will, but only makes the probate *prima facie* evidence (e). It is the practice in investigating title to accept probate or an office copy as sufficient evidence, unless strong ground of suspicion exists. If a will of real estate has not been proved, the will itself must be produced. The production of probate or letters

(z) *Gould v. Lakes*, 6 P. D. 1 ; 49 L. J. P. 59 ; 43 L. T. 382 ; 29 W. R. 155.

(a) *In the goods of Sykes*, L. R. 3 P. & D. 26 ; 42 L. J. P. & M. 17 ; 28 L. T. 142 ; 21 W. R. 416 ; *Dench v. Dench*, 2 P. D. 60 ; 46 L. J. P. 13 ; 25 W. R. 414.

(b) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.

(c) Court of Probate Act, 1859 (20 & 21 Vict. c. 77), s. 62.

(d) *Ibid.* s. 64.

(e) *Barraclough v. Greenhough*, L. R. 2 Q. B. 612 ; 36 L. J. Q. B. 251 ; 15 W. R. 934.

of administration is also a sufficient proof of death of the testator or intestate.

See ADMINISTRATORS, SALES AND MORTGAGES BY—
APPOINTMENTS—CHARGES BY WILL—EXECUTORS,
SALES AND MORTGAGES BY—LEGAL ESTATE—
REGISTRATION OF DEEDS AND WILLS—TRUSTEES,
SALES AND MORTGAGES BY—VESTING.

Requisitions.

1. *The devise of the Whiteacre Farm by A. B. to C. D., through whom the vendor claims as heir-at-law, would have lapsed by the death of C. D. in A. B.'s lifetime. It must therefore be shown that C. D. survived A. B.*

2. *The devise of the Blackacre Farm by A. B. to his son C. B. would have lapsed by the death of C. B. in A. B.'s lifetime, unless his grandson, D. B., was in existence, or some other issue of C. B. was living at the death of A. B. Evidence to this effect must therefore be adduced.*

3. *It appears from his marriage settlement that A. B. married subsequently to the date of his will, abstracted on page . The will would therefore be revoked. It is presumed that he afterwards made a codicil reviving it. Such codicil must be abstracted.*

4. *The will of C. D. does not contain the usual attestation clause. Either the will must be proved before completion, or a statutory declaration must be furnished proving that the requirements of sect. 9 of the Wills Act, 1837 (f), have been complied with, and that the will was not revoked by the testator.*

5. *The will of A. B., deceased, dated , 1834, does not appear to have been executed in the manner then requisite to pass real estate. How is it proposed to meet this objection?*

6. *Blackacre is not specifically mentioned in the will of the testator made in 1837. It must therefore be proved, by*

(f) 7 Will. 4 & 1 Vict. c. 26.

statutory declaration or otherwise, that he was seised of Blackacre at the date of the will, and thenceforward retained seisin thereof until the date of his death.

7. The abstract should be supplemented by setting out the complete attestation clause of the will of A. B., who was entitled to a share of the residuary estate offered as security, and who died domiciled abroad, and evidence must be supplied that the formalities required to make valid bequests of personal estate according to [French] law were complied with, and further, that the will was not revoked by the testator before his death. An attested copy of the will must also be supplied to the purchaser.

WORDS OF LIMITATION.

See ENTAIL—FEE SIMPLE.

WRITS.

See JUDGMENTS, WRITS AND ORDERS,
REGISTRATION OF.

APPENDIX A.

COMMON FORM AND MISCELLANEOUS REQUISITIONS.

1. *There is nothing to show that [the plot of ground on which the house contracted to be sold was built] formed part of [the Whiteacre estate, the title to which is disclosed]. How does the vendor propose to prove this?*

2. *Has the road in the front of the property contracted to be sold been taken over by the district council? If not, any subsisting liability in respect of it must be satisfied before completion.*

3. *Has the back street mentioned in the parcels to the indenture of 18 been made? Is there any sum due in respect of such making or of repair?*

4. *It is presumed that the dotted lines on the plan annexed to the particulars of sale indicate the road mentioned in the particulars of lot . Is this a public or a private road? If the latter, a right of way over it must be granted to the purchaser. By whom is it repairable?*

5. *What is the nature of the present tenancy? Is any notice to quit necessary?*

6. *It is presumed that vacant possession will be given on completion. If not, please supply full particulars of any existing tenancy.*

7. *It is presumed that the counterparts of the expired as well as of the existing leases will be handed over to the purchaser on completion.*

8. *Are any and, if any, which of the walls or fences bounding the property contracted to be sold party walls or fences?*

9. *Has any notice under the Public Health Act been recently served upon the owner or occupier in respect of the property contracted to be sold? If so, has it been duly complied with?*

10. *What is the name and address of the person in whose custody the documents by the indenture of 18 [covenanted to be produced] now are, and where can they be inspected?*

11. *The judgment in the action of A. v. B. is not properly abstracted. There is nothing to show who were the defendants other than B., or that they were the persons in whom the lease was vested. The proceedings should be fully abstracted so that it may be seen that all the persons interested in the lease are bound by the judgment.*

12. *What was the lease referred to in the indenture of 18 as "a certain lease therein mentioned," and in whom was it vested?*

13. *The lease referred to in the indenture of 18 should be abstracted, as also the surrender of it, if it has been surrendered.*

14. *In whose possession was the conveyance referred to in the conditions of sale as having been lost last known to be? The purchaser should be supplied with a statutory declaration showing the circumstances under which the loss occurred. The trustees should make a statutory declaration that they have not previously sold, and the tenant for life that he has not sold or assented to any sale of the property in question.*

15. *Was any settlement made on the marriage of Mrs. A.?*

16. *It does not appear that the original settlement made on the marriage of A. B., deceased, has been produced. This must be done.*

17. *The hereditaments purchased out of the proceeds of sale of the property originally settled were directed to be "settled and assured upon similar uses and trusts to those concerning the hereditaments" settled by [the original settlement. Why, then, was the conveyance of the ground rent taken to the use of A. B. without any reference to the trusts on which he held them, and without, so far as the abstract shows, any other deed being executed declaring the trusts?*

18. *Which of the deeds and documents appearing on the abstract will be handed over to the purchaser, and which retained by any, and what, other persons? Who will acknowledge the right to the production and undertake for the safe custody of those retained?*

19. *Is there any tithe, tithe rentcharge, or land tax payable in respect of the property sold?*

20. *Are there any easements, profits à prendre, restrictive covenants, or other rights affecting the property contracted to be sold?*

21. *Have the vendors had any notice of any dealing with any part of the interests of any of the beneficiaries under the settlement other than those appearing in the abstract, or of any bankruptcy or other circumstance that would prevent any of the beneficiaries from dealing with their interests in the property?*

22. *Is there, to the knowledge of the vendors or their solicitors, any settlement, deed, fact, omission, or any incumbrance affecting the property not disclosed by the abstract?*

[Neither the vendors nor their solicitors are bound to answer any part of this requisition (a); but it is often still inserted, in the hope of obtaining a reply.]

23. *The right is reserved by the purchaser to make any further objections or requisitions arising out of the above requisitions and the answers thereto, and on the further abstract not yet delivered.*

(a) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

APPENDIX B.

SPECIMEN ABSTRACT OF TITLE, WITH ANALYSIS AND NOTES ON TITLE DISCLOSED, OPINION AND RE- QUISITIONS, REPLIES THERETO, AND FURTHER REQUISITIONS.

ABSTRACT OF THE TITLE of Mr. John Nokes to
Two Freehold Messuages Nos. 8 and 9 River
Avenue and One Long Leasehold Messuage
No. 10 River Avenue both in Pickering in the
county of York.

As to both the freehold and leasehold messuages.

1865 By his WILL of this date John Smith of Skelton in Cleveland
5 July in the county of York Yeoman directed his debts to be paid and
subject to payment thereof and to payment of £1000 to his
adopted daughter Jane Smith he

DEvised AND BEQUEATHED all his lands in the said county and
elsewhere to his nephew Charles absolutely

AND he appointed Richard Jones of the city of York linendraper
executor and trustee of his will

1866 The said John Smith died
21 Sept

1867 The said will was proved in the District Registry at York
26 Oct by the executor therein named

As to the freehold messuages only.

1891 By INDENTURE of this date made between Charles Robinson
3 Jan of Pickering in the county of York gentleman of the one

part and Benjamin Isaacs of the city of York financier of the other part

AFTER RECITING that the said C. Robinson was seised in fee simple of the hereditaments thereafter mentioned

AND RECITING agreement for a loan

IT WAS WITNESSED that in consideration of the sum of £1000 paid by the said B. Isaacs to the said C. Robinson (receipt &c.) He the said C. Robinson did thereby for himself his heirs executors and administrators covenant with the said B. Isaacs his executors and administrators for payment on the 3rd of July then next of the said sum with interest thereon at £4 10s. per cent. per annum AND IT WAS ALSO WITNESSED that for the consideration aforesaid the said C. Robinson did thereby grant unto the said B. Isaacs his heirs and assigns

ALL AND SINGULAR the hereditaments and premises comprised in the schedule thereunder written as were particularly delineated and described in the plan thereof drawn on the margin of the now abstracting indenture and therein coloured red

TOGETHER with all messuages &c.

AND all the estate &c.

To HOLD the said hereditaments thereby granted unto the said B. Isaacs his heirs and assigns

To THE USE of the said B. Isaacs his heirs and assigns for ever subject as in the now reciting indenture was mentioned and subject also to the proviso for redemption thereafter contained

PROVISO for redemption on payment by said C. Robinson his heirs executors administrators or assigns on the said 3rd of July next to the said B. Isaacs his executors administrators or assigns of the said sum of £1000 with interest thereon at £4 10s. per cent. per annum

Usual covenants for title by mortgagor

Usual power of sale and usual mortgage clauses

The SCHEDULE above referred to contains (*inter alia*)

ALL THAT piece or parcel of freehold building ground containing by estimation 798 superficial

yards or thereabouts situate at Pickering
aforesaid and bounded on the north by the
river Mole on the south by the Malton Road
and on the east and west by property belong-
ing to William Jones

EXECUTED by said C. Robinson and attested

RECEIPT for mortgage money indorsed and
signed by said C. Robinson

REGISTERED at Northallerton in Book
Page No.

1881 By INDENTURE of this date made between said C. Robinson
4 Sept of the one part and John Nokes of Kingston-upon-Hull corn
merchant and William Nokes of the same place hotel proprietor
of the other part

AFTER RECITING as in the last abstracted indenture

AND RECITING the last abstracted indenture

AND RECITING agreement for loan

IT WAS WITNESSED that in consideration of £100 by the said
J. Nokes and W. Nokes to the said C. Robinson paid &c. (the
receipt &c.) He the said C. Robinson did thereby grant unto
said J. Nokes and W. Nokes

THE PREMISES referred to in the lastly
abstracted indenture

TOGETHER with all messuages &c.

AND the appurtenances

AND all the estate &c.

To HOLD the said premises unto and

To THE USE of said J. Nokes and W. Nokes their
heirs and assigns subject to the last abstracted
indenture

PROVISO for redemption on payment by said C. Robinson his
heirs executors administrators or assigns to said J. Nokes and
W. Nokes or the survivor of them his executors or adminis-
trators or their or his assigns of said sum of £100 with interest
at the rate of £6 per cent. per annum on the 4th March then
next

Covenant by said C. Robinson with said J. Nokes and W. Nokes for payment of the said sum of £100 and for payment of interest after default

Proviso that it should be lawful for the said J. Nokes and W. Nokes or the survivor of them his executors or administrators or their or his assigns at any time or times after default should have been made in payment of the said principal moneys at the time when the same ought to have been paid in pursuance of the proviso and covenant before abstracted without any further consent on the part of the said C. Robinson his heirs &c. or of any other person to sell and dispose of the said hereditaments expressed to be thereby conveyed or any part thereof either together or in parcels and either by public auction or private contract under such special or other stipulations relative to title or otherwise as the mortgagees or the survivor of them his executors &c. should deem proper and to make any such sale as aforesaid either subject to the thereinbefore mentioned indenture of mortgage or with the consent of the persons entitled to the moneys thereby respectively secured freed and discharged from the same and in the latter case upon the terms of such moneys or any of them being discharged out of the purchase-money or otherwise and for the purposes aforesaid or any of them to enter into and to execute all such contracts and assurances as he or they should think proper

Proviso that the said mortgagees or the survivor of them their executors &c. should not execute the power of sale lastly abstracted unless and until they or he should have given left or sent to the mortgagor his heirs or assigns notice in writing requiring payment of the moneys for the time being owing upon the security of abstracting presents and default should have been made in payment of such moneys or some part thereof for the space of three calendar months from the time of giving leaving or sending such notice or unless and until the whole or part of some half-yearly payment of interest which should have become due upon the security of abstracting presents should have become in arrear for two calendar months

Proviso that no purchaser or purchasers under the said power of sale should be bound or concerned to inquire or ascertain whether either of the cases lastly thereinbefore mentioned has

happened or otherwise as to the propriety or regularity of any such sale and notwithstanding such the same should as far as regards the safety and protection of the purchaser or purchasers be deemed to be within the aforesaid power in that behalf and be valid and effectual accordingly

DECLARATION that the receipts of the said mortgagees or the survivor of them his executors &c. their or his assigns for the moneys payable to them or him upon any such sale as aforesaid should effectually discharge the purchaser or purchasers therefrom and from being concerned to see to the application thereof or being answerable or accountable for any loss or misapplication thereof

DECLARATION as to application of purchase-moneys

DECLARATION that the aforesaid power of sale might be exercised by any person or persons who for the time being should be entitled to receive and give a discharge for the moneys owing on the security of now abstracted presents

COVENANTS by the said C. Robinson for himself his heirs &c. for right to convey (subject as aforesaid)

For quiet enjoyment

Free from incumbrances &c.

For further assurance

EXECUTED by the said C. Robinson and attested

REGISTERED at Northallerton in Book

Page No.

1885 The said William Nokes died
1 June

1895 AGREEMENT between J. Nokes of the one part and Thomas
4 Mar James of the other part

RECITING that J. Nokes had sometime since entered into possession as mortgagee of hereditaments thereby agreed to be let

IT WAS AGREED that said J. Nokes should let and said T. James should take from year to year commencing the 1st of March 1895

ALL that messuage or tenement situate and being No. 8 in River Avenue in the parish of Pickering aforesaid

As to the leasehold messuage only.

1880 By INDENTURE of this date made between said C. Robinson of
21 July the one part and said J. Nokes of the other part

AFTER RECITING that by indenture dated 1st January 1840 and made between Thomas Beck of the one part and William Smith of the other part All that newly built messuage with the garden and appurtenances situate in a new road proposed to be called River Avenue in the parish of Pickering aforesaid were demised to said William Smith his executors administrators and assigns for the term of 99 years from the 1st of May 1839 at the yearly rent of £10 subject to covenants by the lessee and conditions therein contained

AND RECITING that by divers of mesne assignments acts in the law and events the premises comprised in the indenture of lease had become absolutely vested in the said C. Robinson for the residue of the said term of 99 years

AND RECITING contract for sale of said premises by said C. Robinson to said J. Nokes for £250

IT WAS WITNESSED that in consideration of £250 by the said J. Nokes to said C. Robinson paid &c. (the receipt &c.) He the said C. Robinson did thereby assign unto said J. Nokes

ALL that messuage or tenement situate and being No. 10 in River Avenue in the parish of Pickering in the North Riding of the county of York and all other the premises demised by the said recited indenture of lease

To HOLD unto the said J. Nokes his executors administrators and assigns for all the residue of the said term of 99 years

EXECUTED by said C. Robinson and J. Nokes and attested

RECEIPT for consideration money indorsed

REGISTERED at Northallerton in Book

Page No.

ANALYSIS AND NOTES ON TITLE.

| | | | |
|---|--------------------------------|--|--|
| <i>As to both the freehold and leasehold messuages.</i> | | | |
| 5th July, 1866. | Will. | John Smith to "Nephew Charles." | Testator's seisin of freeholds? Testator's possession of leaseholds? Attestation clause. Registration. Charge of debts. Charge of legacies. |
| 21st Sept. 1866. | Death of John Smith. | | Wife's dower. |
| 26th Oct. 1867. | Will proved. | | Has vendor office copy? |
| <i>As to the freehold messuages.</i> | | | |
| 3rd Jan. 1881. | Mortgage. | Charles Robinson to Benjamin Isaacs. | Identity of "Nephew Charles" and Charles Robinson to be proved. Does Isaacs take purchase-money or any part thereof? Parcels? Plan? "Subject as in now reciting indenture was mentioned." |
| 4th Sept. 1881. | Second mortgage. | Charles Robinson to Vendor and William Nokes. | Parcels? No joint account clause. Who takes purchase-money? No receipt indorsed. Power of sale insufficient? |
| 1st June, 1885. | Death of William Nokes. | | How proved? |
| 4th Mar. 1895. | Tenancy agreement. (No. 8.) | Vendor to Thomas James. | Notice to determine tenancy of No. 8? Tenancy of No. 9? |
| <i>As to the leasehold messuages.</i> | | | |
| 21st July, 1880. | Assignment of leaseholds. | Charles Robinson to Vendor. | Original lease to be abstracted. Executor's assent to bequest? Tenancy of No. 10? |

General requisitions and observations.

- Road taken over?
Tithe rentcharge?
Restrictive covenants?
Current outgoings to be apportioned?
Ground rent—last receipt, and to whom payable?
Fire insurance?
Deeds to be handed over?
Reserve right to make further requisitions?
- Land Tax?
Easements?
Statutory charges?
Stamps?

OPINION AND REQUISITIONS.

I have perused this abstract and considered the title disclosed.

Requisitions should be made to the following effect:—

- (1) The title is somewhat short. It must be shown that the testator, John Smith, was seised in fee simple of the freehold houses, and was possessed of the leasehold house at the time of his death free from incumbrances.
- (2) The attestation clause of the will of John Smith must be abstracted to show that the testator's nephew Charles was not an attesting witness.
- (3) Was John Smith's will duly registered at Northallerton within six months from the death of the testator? If so, the reference to the book, page, and number should be supplied. If not, the will must be registered at the vendor's expense, or the testator's heir-at-law must concur in the conveyance. In any case the purchaser will require to know the name of the testator's heir-at-law to enable him to search the register for conveyances and mortgages by such heir-at-law.
- (4) It is presumed that the testator, John Smith, left no wife whom he married before the Dower Act, 1833, and who would thus be entitled to dower.
- (5) Evidence of the payment of the legacy of 1,000*l.* to Jane Smith must be supplied.
- (6) Evidence is required that Charles Robinson was the nephew of J. Smith deceased referred to in his will as "my nephew Charles."
- (7) The first mortgagee must join in the conveyance. Is the purchase-money or any part of it to be paid to him?
- (8) To what do the words "subject as in now reciting indenture was mentioned," on p. 2 of the abstract, refer?
- (9) Evidence must be furnished of the identity of the property comprised in the mortgages with the freehold part of the property contracted to be sold. A copy of the plan referred to in the mortgage of the 3rd January, 1881, must be furnished to the purchaser.
- (10) Do the legal personal representatives of William Nokes take any of the purchase-money? They must concur in the

sale, the second mortgage having been made before the Conveyancing Act, 1881, and containing no joint account clause.

- (11) Probate of the will of William Nokes must be produced to show who are his legal personal representatives.
- (12) Evidence must be furnished of the payment of the mortgage money as no receipt is indorsed upon the mortgage deed which was executed before the Conveyancing Act, 1881.
- (13) It appears that the vendor has been in possession. Evidence must be produced to show that some of the money advanced remains owing. The power of sale given to the mortgagee is not such as to make this requisition unnecessary.
- (14) Has any notice to determine the yearly tenancy of No. 8 been given or received? Who is the tenant of No. 9, and on what terms does he hold?
- (15) The lease of 1st January, 1840, must be abstracted in chief.
- (16) The assent of the executor to the specific bequest of the leaseholds contained in John Smith's will must be proved, or the executors must concur in the assignment.
- (17) Who is the present tenant of No. 10, and on what terms does he hold?
- (18) Has the River Avenue been taken over by the local authority? If not, evidence must be furnished that all charges for paving and sewerage have been satisfied.
- (19) What is the amount of land tax and tithe rentcharge payable in respect of the property contracted to be sold? The amount of the latter should have been stated in the abstract.
- (20) Is the vendor or are his solicitors aware of any easements, restrictive covenants, or other rights affecting the property?
- (21) Have any charges been created for the purpose of improvement or drainage under statutory powers?
- (22) All outgoing must be paid by the vendor up to the time fixed for completion, and the current outgoing must be apportioned.
- (23) The last receipt for ground rent due under the lease must be produced. To whom is the ground rent now payable? Please supply full name and address.
- (24) Is the property insured against fire, and if so, to what extent? It is presumed that the vendor will hold any existing insurance policies upon trust for the purchaser.

- (25) All deeds and documents must be properly stamped before completion.
- (26) Which of the abstracted deeds and documents will be handed over to the purchaser on completion? Who will give or acknowledge the purchaser's right to production of the deeds retained, and who will undertake for the safe custody thereof?
- (27) Until the lease of 1st January, 1840, has been abstracted a complete abstract will not have been delivered. The purchaser reserves the right to make further requisitions until 14 days after the delivery of a complete abstract.

From the fact that the amount of the stamps on the various deeds and documents is not noted, and that no memorandum of production appears on the abstract, I presume that it has not yet been examined with the originals. This must, of course, be done in order to ascertain that nothing of importance has been omitted from the abstract, and that all the deeds and documents are properly stamped.

As the property is not of a nature likely to be subject to statutory charges, the only searches that need be made are:—

(i) *For Dealings with the Freeholds.*

- (1) At the Central Office of the Supreme Court for *lis pendens*, the search extending back for five years.
- (2) In the county register at Northallerton, the search extending back to 4th September, 1881.

(ii) *For Dealings with the Leaseholds.*

- (1) At the central office for *lis pendens*, the search extending back for five years, and for annuities the search extending back to the 21st July, 1880.
- (2) At the Land Registry Office for writs and orders affecting land, the search extending back for five years.
- (3) In the county register, the search extending back to the 21st July, 1880.

Unless something is known of the financial position of the vendor, a search extending back for 12 years should be made for bankruptcies at the Bankruptcy Court, and a search extending

back to the 1st January, 1889, for deeds of arrangement at the office of land registry.

Inquiry should be made of the various tenants as to the terms of their tenancies.

Subject to these observations and to the suggested requisitions being complied with, I am of opinion that a good title is disclosed by the abstract.

A. B.,

Lincoln's Inn.

19th Sept., 1898.

ANSWERS TO REQUISITIONS.

(1) The testator paid land tax, tithe rentcharge, and poor rate in respect of all the properties for some years prior to his death. A statutory declaration to this effect can, if required, be supplied to the purchaser at his own expense.

(2) The testator's will was attested by George Jenkins and Annie Tomkins.

(3) The testator's will was not registered under the Yorkshire Registry Acts. Charles Robinson was the eldest son of the testator's only sister Mary, and was his heir-at-law. The vendor is not prepared to give strict proof of this, but the certificates of the marriage of Mary Robinson and the birth of her son can, if required, be procured at the purchaser's expense.

(4) The testator died without ever having married.

(5) As the land is charged with the payment of debts as well as legacies, it is conceived that the purchaser is not bound or entitled to make this inquiry. Jane Smith died in the early part of 1866, before the testator, but we have no particulars.

(6) Charles Robinson was the only nephew of the testator named Charles. See answer to requisition 3.

(7) Certainly; 500*l.* is to be paid direct to the first mortgagee.

(8) The words in question refer to a rentcharge to which other property in the schedule was subject. They have no reference to the property sold.

(9) The plan, a tracing of which we are furnishing, will enable the purchaser to satisfy himself on this point.

(10) and (11) John Nokes is sole executor of the will of William Nokes. The probate is in the possession of John Nokes, and will be produced if required.

(12) After so long a time this can hardly be necessary; the vendor is, however, willing to make a statutory declaration at the expense of the purchaser, that the money was actually paid.

(13) The vendor has been in possession for four years. He is unwilling to produce the evidence asked for. In our opinion the power of sale is sufficient to protect a purchaser. See *Dicker v. Angerstein* (a).

(14) No such notice has been given or received. No. 9 is at present unlet.

(15) This shall be done.

(16) As the testator died so long ago, and as the present tenant has been in possession since 1st January, 1884, under an assignment from the specific legatee, this cannot reasonably be required.

(17) The present tenant of No. 10 holds under a 21 years' lease, but as this lease will expire before the date fixed for completion, it is considered unnecessary to abstract it.

(18) The avenue is, we believe, repairable by the local authority.

(19) The land tax payable last year in respect of No. 8 was 1*l.* 3*s.* 4*d.*; in respect of No. 9, 1*l.* 5*s.*; and in respect of No. 10, 1*l.* The tithe rentcharge payable in respect of all these properties was last year 19*s.* 9*d.*

(20) The vendor is not bound, and declines to answer this requisition (b).

(21) Not that we are aware of.

(22) This will be done.

(23) The ground rent is now payable to Mrs. Howard James (widow), of Inverness Terrace, Bayswater Road, London.

(24) The policy on Nos. 8 and 9 has expired, and these houses are now uninsured. No. 10 is insured in the X. Fire Office for 500*l.* The vendor is willing to hold this in trust for the purchaser on his agreeing to pay a proportional part of the current premium.

(25) All the deeds and documents abstracted are believed to be sufficiently stamped.

(26) The original lease of No. 10, and the abstracted assignment thereof, will be handed over to the purchaser. The vendor

(a) 3 Ch. D. 600; 45 L. J. Ch. 754; 24 W. R. 844.

(b) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

will give the usual acknowledgment of the purchaser's right to production of the second mortgage, and Mr. Isaacs will give the acknowledgment of the purchaser's right to production of the first mortgage. No undertaking will be given.

(27) Any further requisition must be strictly confined to the points arising on the abstracted lease and to these replies.

FURTHER OPINION AND REQUISITIONS.

I have perused the supplemental abstract and the replies to requisitions, and subject to the following further requisitions being satisfactorily answered, I am of opinion that the vendor has made a title to the property which may safely be accepted.

- (1) Evidence of the seisin and possession free from incumbrances of the testator should be furnished. Who would make the statutory declaration suggested?
- (2)—(16) The answers to these requisitions may be accepted.
- (17) The counterpart of the lease of No. 10 will, it is presumed, be handed over to the purchaser on completion.
- (18)—(27) Answers may be accepted.
- (28) Has any notice to repair the leasehold house in accordance with the covenant been served upon the vendor?

Evidence of the death of Jane Smith may, under the circumstances, be dispensed with, and as the plan appears to sufficiently identify the property, no further evidence of identity need be required.

It would be prudent to have the statutory declaration required by requisition (12) with a view to precluding possible objections by future purchasers.

A. B.,
Lincoln's Inn.

24th Oct., 1898.

APPENDIX C.

FORM OF STATUTORY DECLARATION AS TO IDENTITY OF PARCELS AND POSSESSION.

I of in the county of do solemnly and
sincerely declare as follows:—

1. I am years of age. For the last years I have
resided in and near in the county of . I have during
the whole of that time [*or*, for the last years] been well
acquainted with the freehold house, garden, land, and premises
at aforesaid, known as House, lately contracted to
be sold to A. B., and which is more particularly delineated in
the plan hereto annexed.

2. I have read the description of a house, land, and premises
contained in an indenture, dated [*&c.*], and made between [*&c.*],
of the one part, and [*John James, of, &c.*], of the other part.

3. I verily believe that the piece of land coloured [*green*] on
the said plan and the house thereon are part of the land and
premises which were comprised in and conveyed to the said
[*John James*] by the said indenture.

4. During the said period of years, the said house and
premises coloured [*green*] in the said plan (being the premises
so contracted to be sold as aforesaid) were the property of the
said [*John James*] up to the time of his death on the 1st of
August last, and he was then seised of the same, and the said
premises have since the said date been the property of the trustees
of the will of the said [*John James, deceased*], and the said [*John
James, deceased*] was, during the whole of the said period until
his death, and his said trustees have since his death, been in
full, free, and undisturbed possession and enjoyment of the said

premises, or the rents and profits thereof without any acknowledgment being given to the best of my belief to any other person; as I know from [*here state any means of knowledge, e.g., that the deponent has been agent for the estate and collected the rents; or has acted as solicitor to owners and been in constant communication with them and the tenants, or as the case may be*].

And I make this declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835 (a).

(a) 5 & 6 Will. 4, c. 62; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 68.

APPENDIX D.

BOND OF INDEMNITY FROM VENDOR TO PURCHASER [APPLICABLE TO CASES WHERE TITLE TOO SHORT AND WHERE TITLE DEEDS LOST].

Know all men by these presents that I [*A. B.*], of [*&c.*], am bound to [*C. D.*], of [*&c.*], in the sum of *l.* [*twice the loss which the obligee would incur by the failure of the obligor to satisfy the condition*], to be paid to the said [*C. D.*], his heirs, executors, administrators, or assigns, for which payment I bind myself by these presents.

SEALED with my seal. Dated this day of , 189 .

WHEREAS by an indenture of even date herewith and made between the said [*A. B.*] of the one part and the said [*C. D.*] of the other part, the said [*A. B.*] conveyed to the said [*C. D.*] all that piece or parcel of land situate [*&c.*].

AND WHEREAS [*state event in consequence of which the bond has been required, thus, "the said [C. D.] has objected to the title to the said premises commencing at too recent a date," or "the said deeds and documents of title relating to the said premises (if certain deeds only specify them here or in a schedule) have been lost or mislaid," or as the case may be*].

AND WHEREAS the said [*A. B.*] has agreed to enter into this bond [*"in addition to giving [C. D.] the usual implied covenants for title," or "has agreed to enter into this bond in relation to the said conveyance," or as the case may be*].

Now THE CONDITION of the above-written bond is such, that if [*here state events thus, "the hereditaments expressed to be conveyed by the said indenture of even date herewith with their*

appurtenances shall henceforth go and remain to the use of the said [C. D.] in fee simple and be peaceably and quietly held and enjoyed," or "the said [A. B.], his heirs, executors, or administrators shall use his and their best endeavours to find the said deeds and documents of title, and shall, in case he or they shall find the same or any of them, forthwith deliver the deeds and documents whole, uncanceled, and undefaced, or in the condition in which the same shall be found to the said [C. D.], his heirs, executors, administrators, or assigns," or "the said [A. B.], his heirs, executors, or administrators shall at all times hereafter keep indemnified the said [C. D.], his heirs, executors, administrators, and assigns, and all and every part of the premises by the said indenture of even date expressed to be conveyed respectively against all mortgages, charges, and incumbrances whatsoever in anywise affecting the said premises or any of them, or any part thereof, other than incumbrances to be created by the said [C. D.], his heirs, executors, administrators, or assigns, and against all actions, proceedings, claims and demands, costs, damages, and expenses which may be brought or made against him or them, or which he or they may sustain or incur by or by means of any person or persons who shall or may have or claim any estate, title, or interest in or to the premises or any part thereof other than persons claiming under the said [C. D.]," or *as the case may be*], then the above-written bond shall be void, otherwise the same shall be and remain in full force.

Signed, sealed, and delivered }
in the presence of .. }

APPENDIX E.

COSTS UNDER THE SOLICITORS' REMUNERATION ACT, 1881.

The remuneration of solicitors in respect of business connected with sales, purchases, mortgages, settlements, and other matters of conveyancing, and in respect of other non-contentious business, is now regulated by the Solicitors' Remuneration Act, 1881 (*a*), and the general order made thereunder. A solicitor and client may, however, agree before, after, or in the course of the transaction of any business for the remuneration of the solicitor to such amount and in such manner as they think fit (*b*). But this will not render valid an assignment to a solicitor in an action of the fruits of the litigation which he is conducting (*c*); such an assignment being voidable under the principle applied in *Simpson v. Lamb* (*d*). The agreement must be in writing and signed by the person to be bound by it or by his agent (*e*), but need not be signed by both parties (*f*). It may be made on terms that the remuneration shall include or not include the solicitor's disbursements (*g*).

Where, under any order for taxation of costs, such an agreement is relied upon by a solicitor, it may be objected to by the client on the ground that it is unfair or unreasonable, and the taxing master or other officer of the Court may inquire into the facts and certify the same to the Court, and the Court may then, upon just cause being shown for cancelling the agreement or reducing the amount payable under it, order such cancellation or reduction and give all necessary and proper directions for carrying the order into effect (*h*).

(*a*) 44 & 45 Vict. c. 44.

(*b*) *Ibid.* s. 8 (1).

(*c*) *Davis v. Freethy*, 24 Q. B. D. 519; 59 L. J. Q. B. 318.

(*d*) 7 El. & Bl. 84; 26 L. J. Q. B. 121; 28 L. T. (O. S.) 245; 5 W. R. 227; 3 Jur. (N. S.) 412.

(*e*) 44 & 45 Vict. c. 44, s. 8 (2).

(*f*) *Re Fraps, Ex parte Perrett*, (1893) 2 Ch. 284; 62 L. J. Ch. 473; 68 L. T. 558; 41 W. R. 417; 2 R. 411.

(*g*) 44 & 45 Vict. c. 44, s. 8 (3).

(*h*) *Ibid.* s. 8 (21).

The general order made in pursuance of the Act came into operation from and after the 31st December, 1882 (i). It applies to conveyancing business commenced before but not finished until after that date (k).

All drafts and copies made in the course of business, the remuneration for which is provided for by the order, are the property of the client (l).

A solicitor may be allowed a proper additional remuneration for the special exertion in respect of any business which is required to be and is carried through by special exertion in an exceptionally short space of time (m).

A solicitor may accept from his client security for the amount to become due to the solicitor for business to be transacted by him, and for interest on such amount, but so that interest is not to commence until the amount due is ascertained by agreement or taxation (n).

A solicitor may charge interest at 4 per cent. per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client (n), and it is not necessary for the solicitor to make the claim for interest at the time of delivering his bill (o).

In cases where the bill is payable by an infant, or out of a fund not presently available, the demand may be made on the parent or guardian, or on the trustee or other person liable (n).

Where the client has died, the bill must be delivered to his legal personal representative (p).

SCHEDULE I.

This schedule of the order provides for the remuneration of solicitors for sales, purchases, mortgages, and leases and agreements for leases other than mining leases and agreements therefor.

(i) G. O. r. 1.

(k) *Re Lacey*, 25 Ch. D. 301; 53 L. J. Ch. 287; 49 L. T. 755; 32 W. R. 233; *Re Field*, 29 Ch. D. 608; 54 L. J. Ch. 661; 52 L. T. 480; 33 W. R. 553; 49 J. P. 613; *Fleming v. Hardeastle*, 52 L. T. 851; 33 W. R. 776; W. N. (1885) 106.

(l) G. O. r. 3.

(m) *Ibid.* r. 5.

(n) *Ibid.* r. 7.

(o) *Blair v. Cordner*, 19 Q. B. D. 516; 56 L. J. Q. B. 642; 36 W. R. 109.

(p) *Re McMurdo*, (1897) 1 Ch. 119; 66 L. J. Ch. 67; 75 L. T. 576; 46 W. R. 244.

The scale only applies where the work referred to in the schedule has in fact been done (*q*). But where there was a sub-sale of part of property originally sold, and the original transaction was carried out by a conveyance of such part by the original vendor to the sub-purchaser, and of the remainder by such vendor direct to the purchaser, it was held that the solicitor had done all that was necessary for the completion of a conveyance under the original contract, and that he was entitled to two scale fees, one on the purchase by his client, and the other on a sale by his client (*r*).

The scale has no application to transactions respecting real property, the title to which has been registered under the Land Registry Act, 1862 (*s*), the Declaration of Title Act, 1862 (*t*), and the Land Transfer Acts, 1875 and 1897 (*u*).

In all cases to which Schedule I. would otherwise apply, a solicitor may, before undertaking any business, by writing under his hand communicated to the client, elect that his remuneration shall be according to the old system as altered by Schedule II. to the General Order (*x*). The election must be made before the solicitor has done any work for which he could charge if the scale did not apply (*y*). If the solicitor does not make this election Schedule I. applies (*x*).

The remuneration includes law stationer's charges and allowances for time of the solicitor and his clerks, and for copying and parchment, and all other similar disbursements, but does not include stamps, counsel's fees, auctioneer's or valuer's charges, travelling or hotel expenses, fees paid on searches, to public officers on registrations or to stewards of manors, costs of extracts from any register, record or roll, or disbursements reasonably and properly paid, nor any extra work occasioned by changes occurring in the course of any business such as the death or insolvency of a party to the transaction, nor is it to include any business of a contentious character nor any proceedings in any Court (*z*).

(*q*) *Re Lacey*, 25 Ch. D. 301; 53 L. J. Ch. 287; 49 L. T. 755; 32 W. R. 233.

(*r*) *Re Read*, (1894) 3 Ch. 238; 63 L. J. Ch. 831; 71 L. T. 189; 42 W. R. 601; 8 R. 489.

(*s*) 25 & 26 Vict. c. 53.

(*t*) 25 & 26 Vict. c. 67.

(*u*) 38 & 39 Vict. c. 87; 60 & 61

Vict. c. 65; G. O. r. 1.

(*x*) G. O. r. 6.

(*y*) *Re Allen*, 34 Ch. D. 433; 56 L. J. Ch. 487; 56 L. T. 6; 35 W. R. 218; 51 J. P. 325; *Hester v. Hester*, 34 Ch. D. 607; 56 L. J. Ch. 247; 55 L. T. 862; 35 W. R. 233; 51 J. P. 438.

(*z*) G. O. r. 4.

**PART I.—Scale of Charges on Sales, Purchases, and Mortgages,
and Rules applicable thereto.**

SCALE.

| | (1.) For the 1st £1,000. | (2.) For the 2nd and 3rd £1,000. | (3.) For the 4th and each subse- quent £1,000 up to £10,000. | (4.) For each subse- quent £1,000 up to £100,000.* |
|--|-----------------------------------|--|--|--|
| | Per £100. s. | Per £100. s. | Per £100. s. d. | Per £100. s. d. |
| Vendor's solicitor— | | | | |
| For negotiating a sale of property by private contract | 20 | 20 | 10 0 | 5 0 |
| For conducting a sale of property by public auction, including the conditions of sale— | | | | |
| When the property is sold .. | 20 | 10 | 5 0 | 2 6 |
| When the property is not sold, then on the reserved price | 10 | 5 | 2 6 | 1 3 |
| [N.B.—A minimum charge of £5 to be made whether a sale is effected or not.] | | | | |
| For deducing title to freehold, copyhold, or leasehold property, and perusing and completing conveyance (including prepara- tion of contract or conditions of sale, if any) | 30 | 20 | 10 0 | 5 0 |
| Purchaser's solicitor— | | | | |
| For negotiating a purchase of property by private contract .. | 20 | 20 | 10 0 | 5 0 |
| For investigating title to free- hold, copyhold, or leasehold property, and preparing and completing conveyance (includ- ing perusal and completion of contract, if any) | 30 | 20 | 10 0 | 5 0 |
| Mortgagor's solicitor— | | | | |
| For deducing title to freehold, copyhold, or leasehold property, perusing mortgage, and com- pleting | 30 | 20 | 10 0 | 5 0 |
| Mortgagee's solicitor— | | | | |
| For negotiating loan | 20 | 20 | 5 0 | 2 6 |
| For investigating title to free- hold, copyhold, or leasehold property, and preparing and completing mortgage | 30 | 20 | 10 0 | 5 0 |
| Vendor's or mortgagor's solicitor— | | | | |
| For procuring execution and ac- knowledgment of deed by a married woman..... | 50 extra. | — | — | — |

* Every transaction exceeding £100,000 to be charged for as if it were for £100,000.

If a sale or mortgage is arranged partly by the assistance of an agent, the fee for negotiation is not payable to the vendor's or mortgagee's solicitor. (Re Withall, (1891) 3 Ch. 8; 61 L. J. Ch. 14; 64 L. T. 704; 39 W. R. 529.)

A solicitor merely delivering a statement of the leases under which his client holds is not entitled to a fee for deducing. (Wellby v. Still, (1894) 3 Ch. 641; 63 L. J. Ch. 931; 71 L. T. 426; 43 W. R. 73; 8 R. 658.)

Freehold includes an advowson. (Re Earnshaw-Wall, (1894) 3 Ch. 156; 63 L. J. Ch. 836; 71 L. T. 173; 42 W. R. 567; 8 R. 558.)

"Loan" means mortgage; where, therefore, there is no actual advance of money, but moneys are secured, the scale applies. (D'Arcy to White, 31 L. R. Ir. 142.)

RULES.

1. The commission for deducing title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate prices of the lots.

2. The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in and terms of sale are afterwards negotiated and arranged by the solicitor, he is to be entitled to charge commission according to the above scales on the reserved price where the property is not sold, and also one half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the first attempted sale; and for each subsequent sale ineffectually attempted he is to charge according to the present system, as altered by Schedule II. hereto. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is to be chargeable in addition, less one half of the commission previously

allowed on the first attempted sale. The provisions of this rule as to commission on sales or attempted sales by auction are to be subject to Rule II.

Where property was offered for sale by auction, then withdrawn and sold the same day by private contract, held that the vendor's solicitor was entitled to charge for conducting. (Re Beck, 24 Ch. D. 608; 52 L. J. Ch. 815; 49 L. T. 95; 31 W. R. 910.)

3. Where a solicitor is concerned for both mortgagor and mortgagee, he is to be entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to 5,000*l.*, and on any excess above 5,000*l.*, one-fourth thereof.

4. If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is to be entitled to charge 2*l.* additional for each such party after the first.

5. Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II. hereto.

6. Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title and preparing the mortgage deed up to 5,000*l.*, and on any excess above 5,000*l.*, one-fourth thereof, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any).

7. Fractions of 100*l.*, under 50*l.*, are to be reckoned as 50*l.* Fractions of 100*l.*, above 50*l.*, are to be reckoned as 100*l.*

Where property is sold in lots the commission is chargeable on the total amount realized by the sale, though the lots be held under different titles and sold to different purchasers. (Re Onward Building Society, (1893) 1 Q. B. 16; 62 L. J. Q. B. 80; 68 L. T. 443; 41 W. R. 107; 57 J. P. 439.)

8. Where the prescribed remuneration would but for this provision amount to less than 5*l.*, the prescribed remuneration shall be 5*l.*, except on transactions under 100*l.*, in which cases

COSTS UNDER SOLRS.' REMUNERATION ACT, 1881. 387

the remuneration of the solicitor for the vendor, purchaser, mortgagor or mortgagee, is to be 3%.

9. Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgagee purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption.

This rule applies to the case of a sale by a second mortgagee under his power of sale. (Fortescue v. Mercantile Bank of London, (1897) 2 Q. B. 236; 66 L. J. Q. B. 591; 76 L. T. 645; 45 W. R. 529.)

10. The above scale as to mortgages is to apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or on any previous transfer; and it is not to apply to further charges where the title has been so previously investigated. As to such transfers and further charges, the remuneration is to be regulated according to the present system as altered by Schedule II. hereto. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply in cases where the solicitor of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer or estate or other agent. As to a mortgagee's solicitor, it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

The effect of this rule is not to deprive the solicitor of all remuneration for work done in the conduct of a sale by auction when the auctioneer's commission is paid by the client. In such case he is entitled to be paid for his work according to the old system as altered by Sched. II. (Parker v. Blenkhorn, 14 App. Ca. 1; 58 L. J. Q. B. 209; 59 L. T. 906; 37 W. R. 401.)

12. In cases where, under the previous portion of this Schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed in the first column on all transactions up to 2,000*l.*, and to charge in addition those allowed by the second column on all amounts above 2,000*l.*, and not exceeding 5,000*l.*, and further to charge those allowed by the third column on all amounts above 5,000*l.* and not exceeding 50,000*l.*, instead of the rates allowed up to the amounts mentioned in those columns respectively.

PART II.—(*First Scale.*)

Scale of Charges as to Leases, or Agreements for Leases, at Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreement for the same).

Lessor's solicitor for preparing, settling, and completing lease and counterpart:—

| | |
|--|--|
| Where the rent does not exceed 100 <i>l.</i> | { 7 <i>l.</i> 10 <i>s.</i> per cent. on the rental, but not less in any case than 5 <i>l.</i> |
| Where the rent exceeds 100 <i>l.</i> and does not exceed 500 <i>l.</i> | { 7 <i>l.</i> 10 <i>s.</i> in respect of the first 100 <i>l.</i> of rent, and 2 <i>l.</i> 10 <i>s.</i> in respect of each subsequent 100 <i>l.</i> of rent. |
| Where the rent exceeds 500 <i>l.</i> | { 7 <i>l.</i> 10 <i>s.</i> in respect of the first 100 <i>l.</i> of rent, 2 <i>l.</i> 10 <i>s.</i> in respect of each 100 <i>l.</i> of rent up to 500 <i>l.</i> , and 1 <i>l.</i> in respect of every subsequent 100 <i>l.</i> |
| Lessee's solicitor for perusing draft and completing | { One-half of the amount payable to the lessor's solicitor. |

Negotiations which lead up to, and the preparation of the agreement which may precede, an actual lease are included in the scale fee and cannot be separately charged for (Re Emanuel and Simmonds, 33 Ch. D. 40; 55 L. J. Ch. 710; 55 L. T. 79; 34 W. R. 613; 51 J. P. 22; Savery v. Enfield Local Board, (1893) A. C. 218; 62 L. J. Ch. 674; 68 L. T. 722; 42 W. R. 33; 1 R. 160); but negotiations carried on with persons other than the person to whom the lease is eventually granted are not covered by the scale. (Re Martin, 41 Ch. D. 381; 58 L. J. Ch. 478; 60 L. T. 555; 37 W. R. 497.) Where a form of lease has been settled the scale

COSTS UNDER SOLRS.' REMUNERATION ACT, 1881. 389,

charges do not apply to subsequent leases following that form. (Wellby v. Still, (1894) 3 Ch. 641 ; 63 L. J. Ch. 931 ; 71 L. T. 426 ; 43 W. R. 73 ; 8 R. 658.)

The scale applies to agreements for tenancy for less than three years. (Re Negus, (1895) 1 Ch. 73 ; 64 L. J. Ch. 79 ; 71 L. T. 716 ; 43 W. R. 68 ; 13 R. 85.)

(Second Scale.)

Scale of Charges as to Conveyances in Fee, or for any other Freehold Estate, Reserving Rent, or Building Leases Reserving Rent, or other Long Leases not at Rack Rent (except Mining Leases) or Agreements for the same respectively.

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart :—

| Amount of Annual Rent. | Amount of Remuneration. |
|--|--|
| Where it does not exceed 5l. | 5l. |
| Where it exceeds 5l., and does not exceed 50l. | The same payment as on a rent of 5l., and also 20 per cent. on the excess beyond 5l. |
| Where it exceeds 50l., but does not exceed 150l. | The same payment as on a rent of 50l., and 10 per cent. on the excess beyond 50l. |
| Where it exceeds 150l. | The same payment as on a rent of 150l., and 5 per cent. on the excess beyond 150l. |

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for perusing draft and completing } **One-half of the amount payable to the vendor's or lessor's solicitor.**

Rules applicable to Part II. of Schedule I. as to all Leases or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

1. Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule II.

2. Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, he is to charge the vendor's or lessor's solicitor's charges, and one half of that of the purchaser's or lessee's solicitor.

3. Where a mortgagee or mortgagor joins in a conveyance or lease, the vendor's or lessor's solicitor is to charge 1*l.* 1*s.* extra.

4. Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II.

5. Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium.

This rule applies even though no abstract of the lessor's title has been furnished to the lessee. (Re Robson, 45 Ch. D. 71; 59 L. J. Ch. 627; 63 L. T. 372; 38 W. R. 556.)

A lessor's solicitor is not entitled to charge a further fee for negotiating in addition to the scale fee in respect of rent. (Re Horn and Francis, (1896) 2 Ch. 797; 66 L. J. Ch. 15; 75 L. T. 370; 45 W. R. 72.)

6. Fractions of 5*l.* are to be reckoned as 5*l.*

SCHEDULE II.

[In respect of all business the remuneration for which is not prescribed by Schedule I., the remuneration is to be regulated by the old system as altered by Schedule II.]

Instructions for, and drawing and perusing Deeds, Wills and other Documents.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and

COSTS UNDER SOLRS.' REMUNERATION ACT, 1881. 391

reasonable. In ordinary cases, as to drawing, &c., the allowance shall be—

| | |
|----------------------------|----------------|
| For drawing | 2s. per folio. |
| For engrossing | 8d. „ „ |
| For fair copying | 4d. „ „ |
| For perusing | 1s. „ „ |

Attendances.

In ordinary cases 10s.

In extraordinary cases, the taxing master may increase or diminish the above charge if for any special reasons he shall think fit.

ABSTRACTS OF TITLE (where not covered by the above scales).

| | |
|--|---------|
| Drawing each brief sheet of 8 folios . | 6s. 8d. |
| Fair copy | 3s. 4d. |

Journeys from Home.

| | |
|--|---------|
| In ordinary cases for every day of not less than 7 hours employed on busi- ness or in travelling | 5l. 5s. |
| Where a less time than 7 hours is so employed, per hour | 15s. |

In extraordinary cases, the taxing master may increase or diminish the above allowance if for any special reasons he shall think fit.

Schedule II. is not exhaustive, but provides only in respect of certain matters a change in the actual amount of charges to be made. It leaves untouched a very large class of business which is to be paid for according to the old system. (Parker v. Blenkhorn, 14 App. Ca. 1; 58 L. J. Q. B. 209; 59 L. T. 906; 37 W. R. 401.)

Abstracts of title are not included in the words "other documents" in Schedule II. The charge for perusing abstracts is 6s. 8d. for three brief sheets of eight folios each (Re Parker, 29 Ch. D. 199; 54 L. J. Ch. 959; 52 L. T. 686; 33 W. R. 541); but it includes a case for the opinion of counsel, and the practice of the taxing masters to allow a fee of only 1s. per folio as the ordinary fee for

the drawing in such a case is wrong. (Re Mahon, (1893) 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257.)

• *An attendance of a solicitor for a merely formal purpose, such as delivering papers at counsel's chambers, is not an attendance within the meaning of Schedule II., and the practice of taxing masters to allow a fee of 3s. 4d. for such attendance is correct. (Re Mahon, (1893) 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257.)*

The extraordinary cases referred to in Schedule II. are not only more difficult, but also less difficult, cases than the average; but the discretion of the taxing master must only be exercised for special reasons. (Re Mahon, (1893) 1 Ch. 507; 62 L. J. Ch. 448; 68 L. T. 189; 41 W. R. 257.)

INDEX TO REQUISITIONS.

| | Requisition | Page |
|---|-------------|-----------------|
| ABSTRACT, | | |
| general inquiry as to omissions from | 22 | 363 |
| incomplete | — | 5 |
| ACKNOWLEDGMENT, memorandum of, to be abstracted.. | — | 7 |
| ACTION, particulars of, and copy proceedings in | 2 11 | 242 362 |
| ADMINISTRATION, | | |
| <i>durante minore etate</i> | 2 | 11 |
| letters of, production | 1 | 11 |
| ADMINISTRATOR, | | |
| concurrence of, on sale of freeholds | 4 | 166 |
| required on sale of leaseholds | 3 | 166 |
| of convict's property | — | 70 |
| ADVOWSON, | | |
| age of incumbent | 2 | 13 |
| proper root of title to, required | 1 | 13 |
| AGE, | | |
| evidence of, required | — | 14 |
| of intended mortgagor less than twenty-one | 2 | 158 |
| of tenant for life, proof of, on sale or mortgage of rever- sionary interest | 12 | 273 |
| AGREEMENT in writing recited to be abstracted in chief.. | 1 2 1 | 17 17 128 |
| AGRICULTURAL HOLDINGS ACT, | | |
| charges under, inquiry as to | 1 | 21 |
| compensation under | 2 3 4 | 21 21 21 |
| ALIEN, | | |
| inquiry as to whether vendor's predecessor in title was.. | 1 | 23 |
| husband of vendor's predecessor in title was | 3 | 23 |
| naturalization of, to be proved | 2 | 23 |

| | Requisition | Page |
|---|-------------|------|
| ALIENATION, | | |
| determination of estate through | 2 | 22 |
| | 3 | 22 |
| evidence required of determination of estate through .. | 1 | 22 |
| ALTERATION OF DEED | — | 100 |
| ANNUITANT, | | |
| death of, to be proved | 1 | 53 |
| receipt of legal personal representative of, required | 5 | 28 |
| succession duty payable on death of, to be commuted .. | 3 | 96 |
| to join in conveyance | 5 | 53 |
| whether alive or dead | 7 | 28 |
| ANNUITY, | | |
| apportionment of | 8 | 28 |
| | 1 | 33 |
| | 2 | 33 |
| certificate of Board of Trade declaring land freed from, required | 3 | 28 |
| land subject to be freed from | 1 | 27 |
| order for redemption of, to be abstracted | 4 | 28 |
| proof of payment of | 4 | 53 |
| receipt for last payment of, required | 2 | 28 |
| receipt of legal personal representative of annuitant for apportioned part of, required | 5 | 28 |
| release of, on application under Conveyancing Act | 6 | 28 |
| ANTICIPATING, where vendor restrained from | 1 | 29 |
| ANTICIPATION, order binding mortgagor's interest not- withstanding restraint on, to be obtained | 2 | 29 |
| APPOINTMENT, | | |
| deed of, before Lord St. Leonards' Act | 1 | 32 |
| deed releasing power of revocation of, not properly attested | 4 | 32 |
| release of power of, required | 2 | 32 |
| whether power of, ever exercised | 3 | 32 |
| APPORTIONMENT, | | |
| of annuity | 8 | 28 |
| | 1 | 33 |
| | 2 | 33 |
| of current outgoings | 22 | 372 |
| of customary rent | — | 33 |
| of purchase-money on sale of gavelkind | — | 150 |
| | 1 | 158 |
| of quit rent | 10 | 75 |
| of rent | 4 | 33 |
| of tithe rentcharge | 2 | 320 |

INDEX TO REQUISITIONS.

395

| | Requisition | Page |
|---|-------------|------|
| ASSENT, | | |
| of legal personal representative to bequest | 2 | 136 |
| | 2 | 187 |
| | 16 | 372 |
| of legal personal representative to devise | 6 | 53 |
| ASSIGNMENT of lease, consent to | 5 | 83 |
| ATTORNEY, POWER OF, | | |
| before Conveyancing Act, 1882 | 1 | 17 |
| not made irrevocable for fixed time | 2 | 17 |
| BANKRUPTCY, | | |
| appointment of trustee in | 1 | 38 |
| concurrence of trustee in, required | 2 | 38 |
| conveyance executed after act of | 3 | 38 |
| discharge, evidence of | 4 | 38 |
| of vendor before completion | 1 | 340 |
| BIRTH, proof of | 1 | 40 |
| BOROUGH-ENGLISH, | | |
| evidence as to custom | 2 | 40 |
| evidence required that vendor was heir according to the custom of | 1 | 40 |
| BUILDING ESTATE, property forming part of | 1 | 271 |
| | 2 | 271 |
| BUILDING LINE, evidence required that covenants as to, have been observed | 3 | 82 |
| BUILDING SOCIETY, | | |
| certificate of incorporation of, to be produced | 1 | 46 |
| | 5 | 236 |
| instrument of dissolution of, to be abstracted | 5 | 46 |
| mortgage to, by whom paid off | 2 | 46 |
| unincorporated | 4 | 46 |
| winding-up of, by order of County Court, evidence as to jurisdiction required | 3 | 46 |
| BURIAL GROUND, disused | — | 47 |
| CESTUI QUE VIE, proof required that he is living | 1 | 198 |
| CESTUIS QUE VIE, proof required that all are living | 2 | 199 |
| CHARGES, statutory, inquiry as to | — | 178 |
| | — | 278 |
| | 21 | 372 |
| CHARGING, | | |
| inquiry as to exercise of power of | 3 | 32 |
| release of power of, required | 2 | 32 |

| | Requisition | Page |
|--|-------------|------|
| CHARITY, enrolment of conveyance to trustees of | 3 | 236 |
| CHARITY COMMISSIONERS, consent of | 2 | 236 |
| CLASS, ascertainment of | 2 | 343 |
| COMMON, rights of | 7 | 117 |
| COMPANY, | | |
| certificate of incorporation to be produced | 1 | 56 |
| | 4 | 236 |
| not formed for acquisition of gain | 2 | 56 |
| unregistered | 3 | 56 |
| whether incorporated with power to hold land in mortmain | 1 | 236 |
| COMPENSATION, completion without prejudice to right to | — | 323 |
| CONSENT, | | |
| of landlord to assignment required..... | 5 | 83 |
| to marriage, proof of, required | — | 208 |
| CONSOLIDATION, inquiry with a view to prevent | — | 63 |
| CONTINGENT INTEREST, policy of assurance required | | |
| on mortgage of | 1 | 342 |
| CONTINGENT REMAINDER, failure of | — | 65 |
| CONVICT, administrator of property of..... | — | 70 |
| COPARCENERS, property vested in | — | 72 |
| COPYHOLDS, | | |
| custom as to curtesy..... | 4 | 74 |
| descent to be proved by certificate of steward | | |
| of manor | 8 | 75 |
| entail | 2 | 74 |
| freebench..... | 3 | 74 |
| | 3 | 110 |
| fines and heriots..... | 1 | 74 |
| leases | 7 | 75 |
| waste lands | 9 | 75 |
| entry of satisfaction of mortgage of | 5 | 75 |
| forfeiture of, events entitling lord to..... | 6 | 75 |
| quit rent, apportionment of, to be proved | 10 | 75 |
| inquiry as to | 11 | 75 |
| title to, before enfranchisement, required | 1 | 119 |
| COUNTERPART OF LEASE. See LEASE, COUNTERPART OF. | | |
| COUNTY COURT, sale by | — | 8 |
| | 3 | 242 |

INDEX TO REQUISITIONS.

397

| | Requisition | Page |
|---|-------------|------|
| COVENANT, | | |
| as to elevation and building line, evidence of observance | | |
| of, required..... | 3 | 82 |
| breach of, inquiry as to knowledge of vendor or his solici- titors | 12 | 189 |
| liability of assignee of part of leaseholds to perform | 5 | 188 |
| restrictive. See RESTRICTIVE COVENANTS. | | |
| to make footpath, whether complied with | 6 | 82 |
| to use house as private dwelling-house only | 7 | 82 |
| | 2 | 125 |
| CURTESY, | | |
| concurrence of widower entitled to | 1 | 84 |
| custom as to | 4 | 74 |
| tenant by, selling under Settled Land Acts..... | 2 | 84 |
| CUSTOMARY RENT, | | |
| apportionment of | 3 | 33 |
| incorrect statement of, in particulars | 3 | 244 |
| DATE, left blank in original deed..... | 2 | 85 |
| DATES, inconsistency of | 1 | 85 |
| DEATH, | | |
| of tenant in tail without issue..... | 3 | 125 |
| of vendor, before completion | 2 | 340 |
| proof of | 1 | 40 |
| | 3 | 40 |
| without heirs, proof of, required | — | 130 |
| issue, proof of, required | 3 | 125 |
| DEBENTURES, | | |
| copy of, required, and trust deed to be abstracted..... | 1 | 99 |
| whether, become enforceable | 2 | 99 |
| DEBT, proof of payment of, required | 3 | 53 |
| DEBTS, | | |
| funeral expenses and legacies, payment of | 5 | 273 |
| proof of payment of, required..... | 1 | 136 |
| DEED, alteration of | — | 100 |
| DETERMINATION of prior estate, evidence required as to | 1 | 22 |
| DIMENSIONS incorrect..... | 4 | 244 |
| DISCLAIMER, | | |
| of lease by trustee in bankruptcy | 2 | 105 |
| of trust | 1 | 104 |

| | Requisition | Page |
|--|-------------|------|
| DISENTAILING ASSURANCE, | | |
| enrolment of | 1 | 120 |
| | 1 | 125 |
| entry of, on court rolls | 4 | 126 |
| not enrolled | 2 | 120 |
| | 2 | 205 |
| DISTRINGAS, | | |
| authority to inquire as to | 1 | 106 |
| title of person who has obtained, to be shown | 15 | 274 |
| DIVORCE, variation of settlement on | — | 107 |
| DOWER, | | |
| any wife entitled to | 4 | 371 |
| on intestacy | 2 | 109 |
| property not conveyed to uses to bar | 1 | 109 |
| DRAINS, whether made | 6 | 188 |
| EASEMENTS, | | |
| inquiry as to | 1 | 116 |
| | 2 | 116 |
| | 20 | 363 |
| | 20 | 372 |
| in respect of overhead wire | 6 | 117 |
| not disclosed in particulars | 2 | 244 |
| where property severed | 5 | 117 |
| ELEVATION, evidence required that covenants as to, have been observed | 3 | 82 |
| ENFRANCHISEMENT, | | |
| receipt for consideration money on | 2 | 119 |
| title to copyholds prior to | 1 | 119 |
| mines and minerals required | 3 | 119 |
| ENLARGEMENT of long term | 7 | 188 |
| | 8 | 188 |
| ENROLMENT, | | |
| of conveyance to charity | 3 | 236 |
| of disentailing assurance | 1 | 120 |
| | 1 | 125 |
| where not within six months | 2 | 120 |
| | 2 | 205 |
| ENTAIL, | | |
| deed creating, to be abstracted | 3 | 276 |
| to be barred | 1 | 120 |
| ESTATE, amount realized by testator's real | 4 | 273 |
| ESTATE DUTY, receipt for, required | 5 | 97 |
| | 6 | 97 |
| ESTOPPEL, legal estate by | — | 132 |

INDEX TO REQUISITIONS.

399

| | Requisition | Page |
|---|----------------|------|
| EXCHANGE under Inclosure Acts, title to land exchanged required | 3 | 156 |
| FAMILY , pedigree showing state of, required | 2 | 40 |
| <i>FEME COVERT.</i> See MARRIED WOMAN. | | |
| FEOFFMENT by infant | — | 140 |
| | — | 150 |
| | 1 | 158 |
| FIDUCIARY RELATIONSHIP , concurrence of person on whose application transaction is voidable, required.... | — | 142 |
| FINE , | | |
| covenant to levy | 1 | 143 |
| levied by tenant in tail in remainder..... | 2 | 143 |
| FIRE INSURANCE POLICIES , | | |
| production of | 1 | 82 |
| | 9 | 188 |
| to be held in trust for purchaser | — | 164 |
| | 9 | 188 |
| | 24 | 372 |
| FISHING , rights of | 8 | 117 |
| FIXTURES | 1 | 145 |
| ornamental | 2 | 145 |
| trade | 3 | 145 |
| FREEBENCH , custom as to | 3 | 74 |
| | 3 | 110 |
| FRIENDLY SOCIETY , | | |
| rules of | 1 | 148 |
| amount of land held by | 2 | 149 |
| FURTHER ADVANCES , property settled since mortgage | 9 | 230 |
| GAVELKIND , land subject to custom of | — | 150 |
| GROUND RENT , | | |
| power of trustees to purchase | 3 | 152 |
| last receipt for, and to whom payable | 23 | 372 |
| whether payable by tenant for life | 3 | 187 |
| HEIR-AT-LAW , whether person was | 2 | 102 |
| “ HEIRS ,” absence of word | 1 | 139 |
| | 2 | 139 |
| HUSBAND AND WIFE , and third party, conveyance to.. | — | 316 |

| | Requisition | Page |
|---|-------------|------|
| IDENTITY, | | |
| evidence of, of parcels | 4 | 153 |
| | 5 | 153 |
| | 6 | 153 |
| | 7 | 153 |
| | 1 | 361 |
| | 9 | 371 |
| evidence of, of persons | 1 | 153 |
| | 2 | 153 |
| | 3 | 153 |
| | 1 | 273 |
| | 6 | 371 |
| where name of street altered | 9 | 153 |
| where number of street altered | 8 | 153 |
| | 10 | 153 |
| INCLOSURE ACTS, | | |
| award under, proof of interest of applicant required | 2 | 156 |
| award under, proof of regularity required | 4 | 156 |
| exchange under | 3 | 156 |
| INCLOSURE AWARD, title of land in respect whereof | | |
| land contracted to be sold was allotted, required | 1 | 156 |
| INCUMBRANCER, consent of, to sale, required | 2 | 296 |
| INFANT, | | |
| apportionment of purchase-money on sale of gavelkind by — | | 150 |
| | 1 | 153 |
| receipt of purchase-money on feoffment by | — | 140 |
| INSANITY, | | |
| of predecessor in title | 1 | 163 |
| of tenant for life | 2 | 163 |
| of tenant for life, order of Court to be abstracted | 3 | 163 |
| INSUFFICIENTLY stamped documents. See STAMPS. | | |
| INSURANCE, | | |
| against fire, policies to be produced | 1 | 82 |
| | 9 | 188 |
| policy to be held in trust for purchaser | — | 164 |
| | 9 | 188 |
| | 24 | 372 |
| on life of mortgagor of life estate | 3 | 199 |
| on life of vendor of life estate | 4 | 199 |
| INTESTACY, proof of, required | 1 | 166 |
| | 2 | 166 |
| INTESTATES' ESTATES ACT, charge under | — | 167 |
| ISSUE, | | |
| gift to | 1 | 168 |
| gift to, after life estate | 2 | 168 |
| proof of death without, required | 3 | 125 |

INDEX TO REQUISITIONS.

401

| | Requisition | Page |
|--|-------------|------|
| JOINT ACCOUNT CLAUSE , absence of..... | 7 | 230 |
| | 10 | 372 |
| JOINT TENANCY , whether severed | 2 | 171 |
| JOINT TENANTS paying purchase-money unequally, tenants in common in equity | 1 | 171 |
| JOINTRESS , concurrence or proof of death of | — | 171 |
| JUDGMENT , | | |
| not properly abstracted | 11 | 362 |
| registered | — | 174 |
| JUDICIAL SEPARATION ORDER to be abstracted | — | 175 |
| LAND TAX , | | |
| inquiry as to | 2 | 178 |
| | 19 | 362 |
| | 19 | 372 |
| sale free from | 1 | 178 |
| LANDLORD , | | |
| consent of, to assignment, required | 5 | 83 |
| name and address of, required | 18 | 189 |
| | 23 | 372 |
| LEASE , | | |
| abstract in chief of, required | 2 | 193 |
| | 15 | 372 |
| counterpart of, to be handed over | 2 | 151 |
| | 7 | 361 |
| | 17 | 376 |
| inquiry whether notice to determine, given | 4 | 188 |
| mentioned in indenture, particulars as to | 12 | 362 |
| to be abstracted | 13 | 362 |
| LEASEHOLDER , name of, on purchase of ground rent.... | 1 | 151 |
| LEGACIES charged on real estate, evidence of payment of, required | 2 | 53 |
| | 3 | 53 |
| | 5 | 371 |
| LEGACY DUTY , receipt for | 3 | 273 |
| LEGAL ESTATE , | | |
| devolution of, upon death of mortgagee ,..... | 1 | 220 |
| | 2 | 220 |
| outstanding, to be got in..... | 2 | 128 |
| | — | 146 |
| | 1 | 190 |
| | 2 | 190 |
| | 3 | 205 |
| | 2 | 261 |

| | Requisition | Page |
|---|-------------|------|
| LEGAL PERSONAL REPRESENTATIVE. <i>See</i> PERSONAL REPRESENTATIVES. | | |
| LIEN, | | |
| for breach of trust..... | 4 | 196 |
| inquiry whether land free from former vendor's | 1 | 196 |
| of trustees | 2 | 196 |
| | 3 | 196 |
| LIFE INTEREST, | | |
| insurance required on mortgage of | 3 | 199 |
| insurance required on sale of | 4 | 199 |
| LIGHT, right to | 3 | 116 |
| LIMITATION, | | |
| of copyholds, words of | 2 | 139 |
| of leaseholds <i>inter vivos</i> by way of use, void..... | — | 136 |
| of rentcharge, words of | 1 | 139 |
| LOSS, | | |
| of title deed..... | 1 | 207 |
| of title deeds | 2 | 207 |
| LUNACY. <i>See</i> INSANITY. | | |
| MANSION HOUSE, sale of principal..... | 3 | 296 |
| MARRIAGE, | | |
| proof of | 1 | 40 |
| proof of consent to | — | 208 |
| MARRIED WOMAN, | | |
| married before Married Women's Property Act, 1883, | | |
| concurrence of husband required | 1 | 212 |
| | 2 | 212 |
| concurrence of heir-at-law of deceased required | 3 | 213 |
| whether settlement made on marriage of..... | 15 | 362 |
| MEANING OF WORDS "Subject as in now reciting indenture mentioned" | 3 | 371 |
| MERGER of term | 1 | 214 |
| MINES AND MINERALS, | | |
| inclusion of | — | 218 |
| title to, in case of enfranchised land | 3 | 119 |
| MORTGAGE, | | |
| equitable, legal estate not got in | — | 146 |
| money, trusts of..... | 3 | 128 |
| | 3 | 230 |
| MORTGAGE DEBT, to be paid out of purchase-money.... | 1 | 229 |
| | 2 | 229 |

INDEX TO REQUISITIONS.

403

| | Requisition | Page |
|--|-------------|------|
| MORTGAGEE, whether to concur, and whether to receive | | |
| part of purchase-money | 7 | 371 |
| MORTMAIN, power of Society to hold lands in | 1 | 236 |
| NAME AND ARMS CLAUSE | — | 238 |
| NOTICE, | | |
| of dealings by beneficiaries | 8 | 273 |
| | 21 | 363 |
| of equitable charge | — | 239 |
| whether, of prior assignment duly given | 13 | 274 |
| OBJECTION going to root of title | — | 60 |
| OPTION to re-purchase..... | — | 240 |
| ORDER, | | |
| to be abstracted | 2 | 242 |
| winding-up, to be abstracted | 1 | 242 |
| OUTGOINGS, payment and apportionment of | 22 | 372 |
| PAINTING, inquiry as to | 10 | 188 |
| PARTICULARS, incorrect | 1 | 244 |
| | 3 | 244 |
| | 4 | 244 |
| PARTITION, | | |
| required, or legal personal representative of deceased joint | | |
| tenant to join | — | 246 |
| under Inclosure Acts | 2 | 156 |
| PARTNERSHIP DEED to be abstracted..... | 1 | 247 |
| PARTNERSHIP PROPERTY, sale of | 2 | 247 |
| PAYMENT INTO COURT of purchase-money | — | 247 |
| PEDIGREE required | 2 | 40 |
| | 1 | 102 |
| | — | 248 |
| PERPETUITIES, devise infringing rule against..... | 1 | 250 |
| | 2 | 250 |
| PERSONAL REPRESENTATIVES, | | |
| assent of, to devise | 6 | 53 |
| assent of, to specific bequest | 2 | 136 |
| | 2 | 187 |
| | 16 | 372 |
| proof of who are | 11 | 372 |
| PLAN, copy of, required..... | 4 | 153 |
| | 9 | 371 |
| POLICIES of fire insurance to be produced | 1 | 82 |
| | 9 | 188 |

| | Requisition | Page |
|--|-------------|------|
| POLICY of fire insurance to be held in trust for purchaser.. | — | 164 |
| | 9 | 188 |
| | 24 | 372 |
| PORTIONS, | | |
| raising of, inquiry as to | 2 | 251 |
| release of, required | 1 | 251 |
| term for securing | 2 | 318 |
| whether object still exists | 1 | 318 |
| POSSESSORY TITLE, statutory declaration proving, | | |
| required | — | 252 |
| POWER OF SALE, | | |
| absence of | — | 129 |
| | 1 | 335 |
| insufficient, evidence required that some mortgage money | | |
| remains owing | 5 | 229 |
| | 13 | 372 |
| not exercisable by assigns | 8 | 229 |
| not extending to executor of survivor of trustees | 5 | 335 |
| unsatisfactory | 4 | 229 |
| PROFITS <i>à PRENDRE</i> , inquiry as to | 20 | 363 |
| PROTECTOR of settlement, concurrence of, required | 2 | 125 |
| PUBLIC HEALTH ACT, whether notice under, served on | | |
| owner or occupier | 9 | 361 |
| PUBLIC HOUSE, | | |
| licence to be handed over | 1 | 255 |
| whether free | 2 | 255 |
| QUIT RENT, apportionment of, to be proved | 10 | 75 |
| QUIT RENTS, inquiry as to | 11 | 75 |
| RATE, | | |
| private improvement, inquiry as to | 3 | 259 |
| water, receipt for last payment of | 2 | 259 |
| RATES AND TAXES, receipt for last payment of | 1 | 259 |
| REAL ESTATE, inquiry whether sold | 4 | 273 |
| RECEIPT, | | |
| absence of indorsed | 1 | 62 |
| | 1 | 196 |
| | 12 | 372 |
| for last payment of rent | 23 | 372 |
| for last payment of rent & charge | 2 | 28 |
| | 1 | 82 |
| of infant, not sufficient | — | 140 |

INDEX TO REQUISITIONS.

405

| | Requisition | Page |
|---|-------------|------|
| RECITED indenture required to be abstracted | 1 | 68 |
| RECONVEYANCE, absence of | 1 | 205 |
| | 1 | 261 |
| REGISTRATION, absence of indorsed memorandum of.... | 2 | 68 |
| | — | 264 |
| RELEASE, | | |
| of power of revocation not properly attested | 4 | 32 |
| whether founded on lease | 1 | 266 |
| | 2 | 266 |
| | 3 | 266 |
| RENT, | | |
| apportionment of | 4 | 33 |
| customary, apportionment of | 3 | 33 |
| customary, incorrect statement of, in particulars | 3 | 244 |
| quit, apportionment of | 10 | 76 |
| receipt for last payment of, required..... | 23 | 372 |
| RENTCHARGE, | | |
| certificate of Board of Agriculture declaring land freed | | |
| from, required | 3 | 28 |
| land subject to, to be freed from | 1 | 27 |
| order for redemption of, to be abstracted | 4 | 28 |
| proof of payment of | 4 | 53 |
| receipt for last payment of, required..... | 2 | 28 |
| | 1 | 82 |
| RENTS, QUIT, inquiry as to | 11 | 76 |
| REPAIR, notice of want of | 2 | 82 |
| | 28 | 376 |
| REPAIRS, whether tenant for life must execute | 3 | 188 |
| REQUISITIONS, further, right to make, reserved | — | 5 |
| | 23 | 363 |
| | 27 | 373 |
| RESCISSION of contract by purchaser | 1 | 60 |
| RESTRAINT ON ANTICIPATION | 1 | 29 |
| | 2 | 29 |
| RESTRICTIVE COVENANTS, | | |
| evidence of change of character of neighbourhood required | 4 | 82 |
| inquiry as to | 1 | 271 |
| | 20 | 363 |
| | 20 | 372 |
| repudiation of contract in consequence of non-disclosure | | |
| of | 3 | 271 |
| vendor required to observe | 2 | 271 |
| RESULTING USE..... | — | 338 |

| | Requisition | Page |
|--|-------------|------------|
| REVERSIONARY INTEREST, | | |
| inadequacy of consideration | — | 137 |
| instrument creating, to be abstracted | 2 | 193 |
| statutory declaration required on sale of | 14 | 274 |
| RIVER, inquiry as to rights over..... | 8 | 117 |
| ROAD. See STREET. | | |
| ROOT OF TITLE, unsatisfactory | 3 | 276 |
| SALE by the County Court | — | 8 |
| | 3 | 242 |
| SATISFIED TERMS. See PORTIONS; TERMS, SATISFIED. | | |
| SEISIN of testator to be proved | 2 | 276 |
| | 1 | 371 |
| | 1 | 376 |
| SETTLED LAND ACT, | | |
| consent of incumbrancer on sale under | 2 | 296 |
| sale under, of principal mansion house..... | 3 | 296 |
| whether leave obtained for tenant for life to exercise powers under sect. 63 | 4 | 297 |
| whether tenant for life has dealt with his interest | 5 | 297 |
| SETTLEMENT, | | |
| marriage, inquiry as to existence of | 15 | 362 |
| not produced | 16 | 362 |
| variation of, on divorce | — | 107 |
| voluntary, concurrence of trustee in bankruptcy required | 2 | 38 |
| evidence of settlor's solvency required | 2 | 62 |
| SOCIETY. See BUILDING SOCIETY; COMPANY; FRIENDLY SOCIETY; MORTMAIN. | | |
| STAMPS, | | |
| deeds and documents to be properly stamped before com- pletion | 25 | 373 |
| insufficiently stamped document..... | 2 | 309 |
| | 3 | 310 |
| unstamped document | 1 | 309 |
| STATUTORY CHARGES, inquiry as to | — | 178 |
| | — | 280 |
| | 21 | 372 |
| STATUTORY DECLARATION required on sale of rever- sionary interest | 14 | 274 |
| STOP ORDER, | | |
| certificate of fund in Court showing that there is no | 2 | 106 |
| title of person who has obtained, to be shown..... | 15 | 274 |

INDEX TO REQUISITIONS.

407

| | Requisition | Page |
|---|-------------|------|
| STREET, | | |
| proposed, whether made | 8 | 361 |
| whether public or private, and, if latter, whether right of way exists, and by whom repairable | 4 | 361 |
| whether taken over by local authority, and whether paving expenses unpaid | — | 311 |
| | 2 | 361 |
| | 18 | 372 |
| SUCCESSION DUTY, | | |
| additional, to be provided for | 2 | 96 |
| commutation of, where there is an annuitant alive | 3 | 96 |
| receipt for | 1 | 96 |
| | 4 | 96 |
| SUPERFLUOUS LAND, | | |
| sale of, evidence of statutory requirements as to | 1 | 313 |
| evidence required that land is superfluous | 2 | 313 |
| TACKING, | | |
| of mortgages, inquiry with a view to prevent | 1 | 314 |
| mortgagor required to covenant with view to prevent | 2 | 314 |
| TENANCY, | | |
| particulars of, required | 5 | 361 |
| | 6 | 361 |
| | 14 | 372 |
| | 17 | 372 |
| whether notice to determine given | 14 | 372 |
| necessary | 5 | 361 |
| TENANT IN COMMON, devolution of title of deceased to be abstracted | — | 317 |
| TERM, last day of, title to | 6 | 230 |
| TERM, LONG. See ENLARGEMENT OF LONG TERM. | | |
| TERMS, SATISFIED, devolution of, to be shown | 3 | 318 |
| TITHE, particulars of | 19 | 362 |
| TITHE RENTCHARGE, | | |
| apportionment of | 2 | 320 |
| particulars of | 1 | 320 |
| | 19 | 362 |
| | 19 | 372 |
| release of, required | 4 | 320 |
| sale free from, production of award required | 3 | 320 |
| TITLE, | | |
| length of, required under open contract | 1 | 193 |
| root of, unsatisfactory | 3 | 276 |

| | Requisition | Page |
|--|-------------|------|
| TITLE—continued. | | |
| short | 8 | 193 |
| | 4 | 193 |
| | 5 | 193 |
| | 1 | 276 |
| | 1 | 371 |
| where none shown | — | 323 |
| TITLE DEED, lost | 1 | 207 |
| | 14 | 362 |
| TITLE DEEDS, | | |
| express covenants for safe custody required | 5 | 322 |
| in whose possession those covenanted to be produced | 8 | 322 |
| | 10 | 362 |
| particulars of circumstances, where lost | 2 | 207 |
| whether in possession of vendor, and all to be handed over | 1 | 322 |
| which to be handed over and which retained, and who will acknowledge and undertake | 2 | 322 |
| | 18 | 362 |
| | 26 | 373 |
| who will undertake for safe custody of those retained by trustees | 4 | 322 |
| TRUST disclosed on title, production of settlement required. | 8 | 128 |
| | 8 | 230 |
| TRUST ESTATE, devise of, not passing | 1 | 326 |
| TRUST FUNDS, particulars of, required | 6 | 273 |
| TRUST PROPERTY purchased, not settled upon similar uses and trusts to those concerning hereditaments originally settled | 17 | 362 |
| TRUSTEE, | | |
| appointment of new, conveyance of property not passing by declaration | 1 | 346 |
| evidence of circumstances under which person ceased to be | 2 | 326 |
| not joining in conveyance | 3 | 326 |
| TRUSTEES, | | |
| admission as to trust funds | 11 | 273 |
| appointment of new, circumstances giving rise to juris- diction of Court to make vesting order | 2 | 346 |
| appointment of, to be verified | 7 | 273 |
| authority by, for inquiries by proposed mortgagee | 10 | 273 |
| power of sale not extending to executor of survivor | 5 | 336 |
| power to sell | 1 | 336 |
| sale by, consent of tenant for life required | 3 | 336 |

INDEX TO REQUISITIONS.

409

| | Requisition | Page |
|---|-------------|------|
| TRUSTEES—continued. | | |
| sale by sanction of Court where action pending | 2 | 335 |
| sale by, where tenant for life bankrupt | 4 | 335 |
| statement by, required as to notice | 8 | 273 |
| | 9 | 273 |
| to be appointed for purposes of Settled Land Acts | 1 | 296 |
| UNSOUNDNESS OF MIND. See INSANITY. | | |
| UNSTAMPED DOCUMENTS. See STAMPS. | | |
| USE, resulting | — | 338 |
| VACANT POSSESSION, whether to be given | 6 | 361 |
| VENDOR, | | |
| bankruptcy of, before completion | 1 | 340 |
| death of, before completion | 2 | 340 |
| VESTING postponed until age of 25 | 1 | 342 |
| VESTING ORDER, on appointment of new trustees | 2 | 346 |
| VOLUNTARY CONVEYANCE, prior to Voluntary Con- veyances Act, 1893 | 2 | 300 |
| VOLUNTARY SETTLEMENT, | | |
| evidence of settlor's solvency required | 2 | 62 |
| where settlor afterwards bankrupt | 2 | 38 |
| | 1 | 300 |
| WALLS AND FENCES, which are party | 8 | 361 |
| WATER RATE, receipt for last payment of | 2 | 259 |
| WAY, right of | 4 | 117 |
| | 2 | 244 |
| WILL, | | |
| attestation clause to be abstracted | 4 | 358 |
| | 2 | 371 |
| of personalty, execution of, evidence where person is domiciled abroad | 7 | 359 |
| of real estate before Wills Act, execution of | 5 | 358 |
| seisin of testator when will made | 6 | 358 |
| probate to be produced | 1 | 187 |
| | 2 | 273 |
| | 11 | 372 |
| registration under Registry Act | 3 | 371 |
| revocation by marriage | 3 | 356 |
| whether devise has lapsed | 1 | 358 |
| | 2 | 358 |

GENERAL INDEX.

[NOTE.—*The words printed in thick capitals are the titles of subjects in the Alphabetical Digest.*]

ABSTRACT, 5.

- acceptance of, after day named, 58.
- defect in title discovered outside, objection may be taken in respect of, notwithstanding condition, 58.
- non-delivery of, 5, 58.
- of title, specimen, 368.
- perusing, points to be borne in mind, 1.
- system of perusing, 1.
- vendor must furnish, at his own expense, 5.
- verification of, expenses thrown on purchaser, 5.

ACCOUNT DUTY, 96.

- purchaser need not require proof of payment of, 96.

ACCUMULATION,

- of income, restrictions on, 249, 250.

ACKNOWLEDGMENT, 6.

- of married woman, effect of filing certificate of, before 1883...6.
 - evidence of, after 1883...6.
 - before 1883...6.
 - how made after 1883...6.
 - before 1883...6.
 - may be made before judge, 7.
- of right to production, 321.
 - expense of, thrown on purchaser, 340.

ACT OF PARLIAMENT, 7.

- commencement of, 7.
- proof of, 7.

ACTION, 7.

- pendency of, notice, 7, 8.

ADMINISTRATOR OF CONVICT, 69.

ADMINISTRATORS,

- appointment of, how proved, 10.
- cannot dispose of their interest by will, 10.
- derive their title from the letters of administration, 9.
- have power to deal with personal estate even after 20 years, 9.
- no title till grant of letters of administration, 9.
- one only of several, can deal with personal estate, 9, 182.
 - cannot deal with real estate without authority of the Court, 10.
- power to convey land contracted to be sold, 9.
 - deal with personal estate specifically bequeathed, 9.
 - sell and mortgage to raise estate duty, 10.
- real estate vests in, under Land Transfer Act, 1897...10.
- See also* PERSONAL REPRESENTATIVES.

ADMINISTRATORS, Sales and Mortgages by, 9.**ADMITTANCE TO COPYHOLDS,**

- may be by attorney, 72.
- of tenant for life, that of remainderman, 72.
- See also* COPYHOLDS.

ADVERSE POSSESSION. See LIMITATION, STATUTES OF.**ADVOWSON,**

- abstract of, of what it should consist, 11.
- distinguished from next presentation, 11.
- may be purchased by a clergyman in order to present himself, 12.
- proper title to, 11, 193.
- restrictions on sale of, 12, 13.
 - after 1898...12, 13.
- vested in a spiritual office, cannot be sold, 13.
- when barred by Statutes of Limitation, 11, 12, 204.

ADVOWSONS, 11.**AFTER-ACQUIRED PROPERTY,**

- covenants to settle, when void against trustee in bankruptcy, 35.

AGE, EVIDENCE OF, 14.

- uncorroborated declaration need not be accepted as, 14.

AGENTS, 14.

- appointed to execute deed, must be appointed by deed, 14.
- See also* ATTORNEY, POWER OF.

AGREEMENT,

- for lease, stamp on, 303.
- for sale, stamp on, 303.
- under hand only, stamp on, 303.
 - seal, stamp on, 303.

AGREEMENTS, 17.

preliminary, when to be abstracted in chief, 17.

AGRICULTURAL HOLDINGS, 18.

Act of 1883,

charge under, when not registered, 20.

to be registered, 20.

right of tenant to compensation under, cannot be excluded by agreement, 19.

compensation in case of allotments and cottage gardens, 18.

improvements with landlord's consent in writing, 18.

without landlord's consent in writing, 18.

inquiries to be made when purchasing, 20.

notice required to determine tenancy from year to year, 19.

tenant's rights against mortgagee, 19.

ALIENATION,

gift over on, valid, 22.

partial restraint on, valid, 22.

restraint on, in general void, 21.

ALIENATION, RESTRAINT ON, 21.

ALIENS, 23.

ability of, to hold land on lease for 21 years, 23.

can be made denizens, 23.

cannot be protectors, 23.

disabilities of, at common law, 23.

disabilities of, removed, 23.

naturalization of, how proved, 23.

who are, 23.

ALLOTMENTS. See AGRICULTURAL HOLDINGS.

ALTERATIONS,

in deeds, 100.

in wills, 356.

ANALYSIS AND NOTES ON TITLE, 370.

ANNUITIES AND RENTCHARGES, 24.

ANNUTTY,

estate duty, when payable on determination of, 90, 91, 95.

part of land charged may be released, 26, 33.

succession duty payable on determination of, 87.

must be commuted, 88.

unregistered, binds a purchaser with notice, 27.

ANNUITY—continued.

when barred by Statutes of Limitation, 27.

when must be registered, 27.

See also RENTCHARGE.

ANSWERS TO REQUISITIONS, 374.**ANTE-NUPTIAL SETTLEMENTS. *See* SETTLEMENT.****ANTERIOR TITLE,**

purchaser has no right to abstract of, 274.

ANTICIPATION, RESTRAINT AGAINST, 29.

applies only to married women's property, 29.

ceases on divorce or judicial separation, 29.

does not prevent disposition by will, 29.

exercise of powers under Settled Land Acts, 29.

power of Court to bind interest of married women notwithstanding, 29.

APPOINTMENT,

in execution of power, stamp on, 304.

of new trustee, stamp on, 304.

of person to convey, 345.

of trustees. *See* TRUSTERS.

should contain no declaration of use, 31.

APPOINTMENT, POWER OF,

exercisable by infant, 31.

married woman, 31.

formalities to be observed when exercisable by deed, 30.
will, 30.

fraud on, 31.

general devise does not exercise special, 30.

exercises general, 30.

instrument prior to root of title creating, need not be abstracted, 31.

intention to exercise, must appear, 30.

release of, 31.

APPOINTMENTS, 30.**APPORTIONMENT, 32.**

of tithe rentcharge, 319, 320.

APPURTENANCE CLAUSE,

now usually omitted, 67.

ASSENT,

of legal personal representative to bequest, 52, 53.

devise after 1897...52, 53.

ASSIGN,

covenant not to, does not prevent underletting, 180.

ASSIGNMENT of leasehold property. *See* LEASE.

ASSIGNS,

covenant for, does not apply to acts of underlessee, 180, 254, 255.

lessee entitled to benefit of covenant with, 180.

ATTENDANT TERMS, 317, 318. *See also* SATISFIED TERMS.

ATTESTATION,

of deeds, 99.

exercising powers of appointment, 30.

of wills, 348.

ATTORNEY, POWER OF,

by infant, 16.

by married woman, 15.

by trustees, 15.

can be made irrevocable for one year, though not given for value, 16.

cannot be assigned, 16.

ceases on death of donee, 16.

construction of, 15.

for valuable consideration, can be made irrevocable, 16.

how revoked, 16.

may be deposited in the central office, 16.

exercised in name of donee, 16.

persons acting under, protected, 16.

should be exercised in name of donor, 16.

when deed required, 14.

BANKRUPT,

ability of, to make title to after-acquired property, 36, 37.

discharge of, how proved, 37.

BANKRUPTCY, 34.

adjudication, order of, how proved, 34.

annulment of, effect on property, 36.

dealings without notice of act of, protected, 36.

under Acts prior to 1883...37, 38.

BANKRUPTCY, TRUSTEE IN,

can disclaim onerous property, 35, 104.

can dispose of bankrupt's copyholds, 35.

estates tail vested in bankrupt, 35, 123.

BANKRUPTCY, TRUSTEE IN—*continued*.

- can exercise general power vested in bankrupt, 35.
- can sell and give discharge, 34.
- evidence of appointment of, 34.
- how, conveys, 34.
- settlements void against, 34, 35, 299.
- trust property does not pass to, 36, 329.

BARGAIN AND SALE,

- for a year, 265.
- of freeholds, must be enrolled, 119.

BASE FEE,

- incidents of, 123.
- persons entitled to have powers of tenant for life under Settled Land Acts, 124.
- provisions of Real Property Limitation Act, 1874, as to, 124, 200.

BEDFORD LEVEL,

- registration of instruments dealing with lands in, 264.

BENEFICE,

- restrictions on sale of, 12.
- after 1898...12, 13.

BIRTH,

- evidence of, 39, 40.

BIRTHS, MARRIAGES, AND DEATHS, 39.**BOND OF INDEMNITY,**

- from vendor to purchaser, 379.

BORN,

- meaning of word, in a devise or bequest to persons born at given period, 342.

BOROUGH-ENGLISH, 40.

- custom of, as to devolution upon death, 40, 41.
- as to dower, 41.

BUILDING LEASES,

- provisions of Settled Land Acts enabling tenant for life to grant, 286, 287.

BUILDING SOCIETIES, 41.

- Act of 1836, how far repealed, 43.
- certificate of incorporation, evidence, 42.
- indorsed receipt, effect of, 43, 44.
- exempted from stamp duty, 44.

BUILDING SOCIETIES—*continued.*

- mortgage to, before 31st July, 1868, free from stamp duty, 44.
- whether it can be assigned, 44.
- power of, to borrow, 44, 45.
- hold and deal with land, 41.
- receipt revests legal estate without reconveyance, 43, 44, 260.
- rules of, printed copy, evidence, 42.
- under Act of 1836...42, 43.
- appointments of trustees, how proved, 42.
- vesting of property, on incorporation under Act of 1874...42, 43.
- winding-up of, majority required for, how ascertained, 46.
- registered, 45, 46.
- unregistered, 46.

BURIAL GROUND,

- disused, buildings cannot be erected upon, 47.
- disposed of under Act of Parliament, 47.
- purchaser without notice not bound to take, 47.

BURIAL GROUNDS, 47.

CAPITAL MONEY,

- arising under Settled Land Acts, payable into court or to trustees of settlement, 291.

CESTUI QUE VIE,

- effect of death of, on purchase of life estate, 340.
- order for production of, 198.

CHARGES BY WILL, 48.

CHARGES, STATUTORY, 176—178. See also LAND IMPROVEMENT ACTS.

CHARITABLE USES,

- land given by will to, must be sold, 235.
- land may now be given by will to, 235.
- requirements of Act of 1888, as to, 233.
- restrictions on alienation of land, for, 232, 233.
- to what assurances for, requirements of Act of 1888 do not apply, 234.
- what is "land" within Mortmain and Charitable Uses Acts, 1888 and 1891...233.
- when land could formerly be disposed of by will for the purposes of, 235.

CHATTELS REAL. See LEASE.

CHIROGRAPH,

evidence of fine, 143.

CHOSSES IN ACTION,

of married women, 210.

CHURCHYARD,

disused, 47.

CLASS,

at what period ascertained in case of gifts to, 342.

COMMENCEMENT OF TITLE. See ROOT OF TITLE.**COMMISSIONERS,**

acknowledgment before, 6.

COMMITTEE,

of person of unsound mind. *See* LUNATICS.

COMMON,

rights of. *See* PROFITS À PRENDRE.

COMMON OWNERSHIP,

apparent easements implied on severance of, 111.

COMMON, TENANT IN, 316.**COMPANIES,**

corporate state continues during winding up of, 55.

inquiry as to power of, to acquire land, 56.

property not divested by winding up of, 55.

unregistered, winding up of, 55, 56.

words of limitation in conveyance to, 55.

COMPANIES REGISTERED UNDER THE COMPANIES ACT, 1862...54.

certificate of incorporation, evidence that company is duly registered, 54, 55.

power of, to hold land, 54.

CONDITIONS OF SALE, 57.

annulment of sale where no title shown, 268.

objection withdrawn, 268.

meaning of "default of vendor" in, 60.

providing for compensation for misdescription, 59.

requiring purchaser to assume what vendor knows to be untrue, bad, 59.

CONSIDERATION, 61.

effect of omission of receipt before 1881...61.

since 1881...61.

reasons for stating, in deed, 61.

CONSOLIDATION OF MORTGAGES, 63.

inquiries to be made by purchaser of equity of redemption with a view to preclude, 63.

CONSTRUCTIVE NOTICE,

purchaser cannot avoid by not investigating title, 239.

See also NOTICE.

CONTINGENT REMAINDERS, 64.

can be disposed of by deed or will, 64.

effect of Act of 1877 upon, 64.

trustees to preserve, when necessary, 64, 65.

when liable to fail, 64, 65.

CONTRACT,

preliminary, when to be abstracted in chief, 17.

CONVEYANCE,

by a person to another jointly with himself, 65, 66.

by husband to wife or wife to husband, 65, 66.

of equity of redemption on sale, stamp on, 305.

or transfer on sale, stamp on, 304.

otherwise than for value, stamp on, 305.

CONVEYANCES, 65.

by deed, 64, 266.

deed of grant, 67, 151.

lease and release, 265.

statutory release, 265, 266.

CONVEYANCING COSTS. *See* Costs.

CONVICT,

disabilities of, 69.

power of administrator of property of, 69.

trust and mortgage property of, 69, 70.

CONVICTS, TRAITORS AND FELONS, 69.

CO-OWNERS. *See* COPARCENERS; JOINT TENANTS: TENANTS BY ENTIRETIES; TENANTS IN COMMON.

COPARCENARY,

how estate in, arises, 70.

destroyed, 71.

COPARCENERS, 70.

how descent traced through, 70.

no right of survivorship between, 70.

COPYHOLDS, 72.

admittance to, may be effected by attorney, 72.

of tenant for life, that of remainderman, 72.

conveyance of, by tenant for life, 73.

effect of direction to trustees of will to sell, 72.

entail in, how barred, 123.

how mortgages of, effected, 73.

how statutory covenants implied on sale of, 73.

lease of, with lord's licence, 74.

without lord's licence, cause of forfeiture, 74.

may be conveyed by tenant for life without surrender, 291.

trustee in bankruptcy without admittance,
35, 36.

sale of, under Settled Land Act, 73.

what title to consist of, 72.

See also ENFRANCHISEMENT OF COPYHOLDS.

CORPORATION,

property does not vest in, if prohibited by statute from purchasing,
56.

property vests in, although no power to purchase, 56.

COSTS,

in conveyancing matters, 381.

scale of charges, Schedule I., Part I., on sales, purchases and mortgages, 384.

Part II., on leases and conveyances at
a rent and agreement for the same,
other than mining leases, 388.

Schedule II., for other conveyancing business, 390.

COUNTERPART OR DUPLICATE,

of exchange, stamp on, 305.

of lease, stamp on, 306.

of partition, stamp on, 308.

COURT,

order of, not invalidated against a purchaser for want of jurisdiction, 8, 241.

COVENANTS, 76.

contract to purchase lease containing onerous, can be repudiated,
82.

evidence that, complied with, 80.

COVENANTS—continued.

- not running with the land, which will still be enforced, 81.
 - re-entry on breach of. *See* LEASE.
 - restrictive, are independent of rule against perpetuities, 81.
 - omission of mention from particulars, 81, 82, 271.
 - running with the land, 80.
 - to purchase beer from lessor, bind assigns, 254.
 - to settle after-acquired property, when void against trustee in bankruptcy, 35, 299.
 - when vendor's, affect purchaser of freeholds, 81.
 - leaseholds, 80.
- See also* RESTRICTIONS AS TO USER OF LAND.

COVENANTS FOR TITLE,

- implied, variation of, 78.
- implied, what are—
 - in conveyances, 76.
 - by trustees, mortgagees, &c., 77.
 - of leaseholds, 76.
 - in mortgages, 76, 77.
 - of leaseholds, 77.
 - in settlements, 77.
 - when husband and wife both convey as beneficial owners, 77.
 - where person conveys by direction of person conveying as beneficial owner, 77.

CROWN DEBTS,

- search for, 277.

CURTESY, 83.

- definition of, 83.
- effect of divorce on, 107.
- out of copyholds, 74, 84.
 - gavelkind land, 84.
 - lands held in joint tenancy, 84.
 - wife's separate estate, 83.
- tenant by, has powers of tenant for life under Settled Land Acts, 84.
- to what it attaches, 83.
- when it attaches, 83.

CUSTOMARY HEIR,

- copyhold property devolves to, on intestacy, 165.

CUSTOMS OF MANORS,

- inquiry should be made as to, on purchase of copyholds, 73.

DAMAGES,

when vendor unable to make a title, 323.

DATE, 85.

deeds executed on same, 85.

DEATH,

evidence of, 39, 40.

DEATH DUTIES, 86. *See* ACCOUNT DUTY; ESTATE DUTY;
LEGACY DUTY; PROBATE DUTY; SETTLEMENT ESTATE DUTY;
SUCCESSION DUTY.**DEBENTURES, 97.**

floating security created by, 97, 98.

meaning of term, 97.

power to borrow on, 98.

questions to be considered as to title under, 98, 99.

DEBTS,

when charge of, implied, 48, 355.

DECLARATION,

statutory, as to identity of parcels and possession, 377.

DEED,

not otherwise charged with duty, stamp on, 305.

DEEDS, 99.

alteration of, effect of wrongful, 100.

presumption as to, 100.

of marksmen, 99.

sealing and delivery necessary, 100.

when attestation necessary, 99.

whether signing necessary, 100.

DEFECT IN TITLE,

discovered outside abstract, objection may be taken on account
of, 58.

DELIVERY,

essential to validity of deed, 100.

DEMISE,

effect of use of word, in a lease, 79.

DENIZATION,

of alien, 23.

DEPRECIATORY CONDITIONS,

effect of, on sales by trustees, 332, 333.

DESCENT, 101.

rules of—

as regards both estates in fee simple and fee tail, 101.

further, as regards only estates in fee simple, 101, 102.

qualification under Intestates' Estates Act, 102, 166, 167.

DEVISE. *See* **WILL.**

DEVISEE,

purchaser from, must inquire into legacies charged, 51.

scheduled debts charged, 51.

need not inquire into debts charged on real estate, 51.

DEVOLUTION OF TRUST ESTATES,

on death of trustee, 324.

copyholds, 325, 326.

freeholds, 324, 325.

leaseholds, 326.

where there are two or more trustees, 324.

DISABILITIES. *See* **INFANTS; LIMITATION, STATUTES OF; LUNATICS; MARRIED WOMEN.**

DISCLAIMER, 103.

by married woman, 103, 210.

by trustee in bankruptcy, 35, 104.

how effected, 103.

of power, 104.

when leave of court required for trustee in bankruptcy to disclaim, 104.

DISENTAILING ASSURANCE,

an unsatisfactory root of title, unless it contains a recital of deed creating entail, 275.

See also **ENTAIL.**

DISTRINGAS, 105.

effect of, 105.

how obtained, 105.

DISTRINGAS AND STOP ORDER, 105.

DIVORCE, 106.

consequences of, as to property, 106.

under settlement, 106.

where husband and wife tenants by entireties, 315.

curtesy and dower lost by, 107.

DIVORCE—continued.

power of Court to settle guilty wife's property, 106.
vary settlements, 106.

DOCUMENTS,

not in vendor's possession, 340.

DOUBTFUL TITLE, 107.

Court will not compel purchaser to take, 107.

DOWER.

- arrears of, which may be claimed, 109.
- effect of divorce on, 107, 109.
- inquiry as to, on purchase, 108.
- none in respect of estate held jointly, 108.
 - pur autre vie*, 108.
- uses to bar, effect of, 107, 108.
- when statute-barred, 109.
- wife's right to, before 1834...107.
 - how defeated, 107.
- wife's right to, since 1834...108.

DOWER AND FREEBENCH, 107.

DRAINAGE. See LAND IMPROVEMENT ACTS.

DUPLICATE OR COUNTERPART.

stamp on. See COUNTERPART.

DUTY.

inhabited house, 258.

See also ACCOUNT DUTY; ESTATE DUTY; LEGACY DUTY; PROBATE DUTY; SETTLEMENT ESTATE DUTY; SUCCESSION DUTY.

EASEMENTS,

- definition and instances of, 110.
- land remains subject to, in hands of purchaser, 110.
- non-disclosure of, when apparent, no defence to specific performance, 111.
 - when not apparent, defence to specific performance, 111, 112.
- of necessity, 111.
- on severance of tenements, 111.
- pass to purchaser of land, 110, 111.
- provisions of Prescription Act bind the Crown except in the case of light, 115.
- when acquired at common law, 112, 113.
- when acquired under Prescription Act, 113—115.

See also PRESCRIPTION.

EASEMENTS AND PROFITS À PRENDRE, 110.

ENFRANCHISEMENT OF COPYHOLDS, 117.

- can be carried out by limited owners under Copyhold Acts, 118.
- tenants for life under Settled Land Acts, 118.
- deeds must be registered in register counties, 119.
- effect of execution of deed of, by Board of Agriculture, 118.
- outside Copyhold Acts, effect of, 118.
- purchaser cannot call for title to make, 119.
- rights of common not affected by, 118.
- rights to mines and minerals not affected by, 118.
- under Copyhold Acts, effect of, 118.

ENLARGEMENT OF LONG TERM, 186, 187.

- by whom, may be made, 186.

ENROLMENT, 119.

- what instruments formerly required, 120.
- require, 119, 120.
- where effected, 120.

ENTAIL, 121.

- can now be created by deed by words "in tail," 121.
- consent of protector necessary to bar remainderman, 122.
- cross remainders, when implied, 122.
- equitable, how barred, 123.
- how dealt with on bankruptcy of tenant, 35, 123.
- in copyholds, how barred, 123.
- power of tenant to dispose of, by deed enrolled, 122.
- lease, 122.
- tenant has powers of tenant for life under Settled Land Acts, 123, 124.
- when remaindermen barred by Real Property Limitation Acts, 124
- words necessary to create, in deed, 121.
- will, 121.

ENTAILED ESTATES,

- specific performance of a contract to sell, may be decreed, 125.
- subject to curtesy, 125.
- dower, 124, 125.

ENTIRETIES,

- tenants by, 315.

EQUITABLE ESTATES, 126.

- deed necessary to disentail, 127.
- where acknowledgment required, 127.
- escheat of, 126, 130.
- formalities required by Statute of Frauds for creation and transfer of, 126, 127.

EQUITABLE ESTATES—continued.

- may be transferred without formalities, 127.
- not subject to technical rules depending on incidents of tenure, 126.
- purchaser for value without notice takes free from, 127.
- subject to same incidents as legal estates, 126.

EQUITABLE MORTGAGES, 128.

- can be effected by deposit of title deeds without writing, 128.
- liable to be postponed if title deeds not obtained, 129.
- powers of sale implied in, 128, 129.
- when legal estate can be conveyed under power in, 129.

EQUITY OF REDEMPTION,

- may be transferred without formalities, 127.

EQUITY TO SETTLEMENT, 209, 210.**ERASURE,**

- in deeds, 100.
- in wills, 356.

ESCHEAT, 130.

- equitable interests liable to, 126, 130.
- incorporeal hereditaments liable to, 130.
- on attainder, 69.
- on death of tenant without heirs, 130.

ESTATE CLAUSE,

- formerly no use, now omitted, 67.

ESTATE DUTY, 90.

- bonâ fide* purchaser protected from, 90.
- exemptions from, 92, 93.
- not payable on trust property, 92.
- proof of payment of, 95.
- property passing on death, 90, 91.
- when payable, 90.

ESTATE IN FEE SIMPLE. See FEE SIMPLE.**ESTATE PUR AUTRE VIE, 197.**

- can be disposed of *inter vivos* or by will, 197.
- liable to debts of ancestor, 197.
- successive limitations of, permitted, 198.

ESTATE TAIL,

- words necessary to create, in deed, 121.
- will, 121.

See also ENTAIL.

ESTATE, SETTLED. *See* SETTLED ESTATES ACT; SETTLED LAND ACTS.

ESTOPPEL, 131.

- as to judgments of a Court of Record, 131.
- between landlord and tenant, 132.
- corporations, as to acts *ultra vires* not bound by, 132.
- equitable, 131.
- infants not bound by, 132.
- married woman restrained from anticipation not bound by, 132.
- recitals in deeds, 131, 132.

EVIDENCE. *See under various Headings.*

EXCHANGE,

- may be effected under Inclosure Acts, 155.
- stamp on, 305.

EXECUTION, DELIVERY IN,

- void against a purchaser, unless registered at Land Registry Office, 172.

EXECUTORS,

- can convey real estate where there is contract for sale subsisting at death of testator, 135.
 - can deal with leaseholds, even though specifically bequeathed, 135.
 - over which testator had general power of appointment, 135.
 - one only of several can deal with personal estate, 135.
 - cannot deal with real estate without the authority of the Court, 135.
 - power of, to sell under Lord St. Leonards' Act, 49, 50, 133.
 - where land charged with debts and legacies, 49, 50.
 - where real estate not devised to them, 133.
 - under Finance Act, 1894...134, 135.
 - purchaser from, need not inquire into debts unless 20 years have elapsed, 134.
 - real property devolves to, under Land Transfer Act, 1897...135.
- See also* PERSONAL REPRESENTATIVES.

EXECUTORS, SALES AND MORTGAGES BY, 133.

EXECUTORY INTERESTS, 136.

- cannot be created *inter vivos* in leaseholds, 136.
- how created, 136.
- remainder limited by means of, subject to common law rules affecting remainders, 136.

EXPECTANT HEIRS, 137.**EXPENSES,**

thrown on purchaser by Conveyancing Act, 1881...340, 341.

FAMILY BIBLE,

how far entries in, evidence, 40.

FEE SIMPLE, 137.

limitation of, in copyhold estates, 138.

to corporations, 138.

words formerly necessary to pass estate *inter vivos*, 137.

"in fee simple" can now be used, 138.

necessary to create, by will, 138, 139.

FELONY,

attainder of, effect of, on property, 69.

FEME COVERT. See MARRIED WOMEN.**FEOFFMENTS, 139.**

deed necessary, except in case of feoffments by infants under customs, 139.

gavelkind lands of infants conveyed by, 140.

how effected, 139.

tortious operation of, abolished, 140.

writing necessary in all cases, 139, 140.

FIDUCIARY RELATIONSHIP, 140.

cases where transactions liable to be impeached, 140.

may be set aside as against a sub-purchaser with notice, 141.

FINE,

chirograph evidence of, 143.

effect of, on estates tail, 142, 143.

use of, to bar dower, 143.

dispose of married women's estates, 143.

FINES AND RECOVERIES, 142.**FIRE INSURANCE, 164.****FISHING. See PROFITS À PRENDRE.****FISHING REQUISITIONS,**

need not be answered, 280, 363.

FIXTURES, 144.

agricultural, 144, 145.

landlord's right to purchase of agricultural, 144, 145.

FIXTURES—*continued*.

- ornamental, 144.
- pass with freehold, 144.
- trade, 144.
- what fixtures within Agricultural Holdings Act, 144.

FORECLOSURE, 146.

- order, not to be invalidated against a purchaser, 146.

FORFEITURE,

- of traitor's and felon's property, 69.

FRAUD,

- on power of appointment, 31.

FRAUDULENT CONVEYANCE, 34, 35, 297—299.

FREEBENCH,

- inquiry as to, 73, 109.
- in respect of enfranchised property, 109.
- none, where purchaser not admitted, 109.
- where exists, 109.

FRIENDLY SOCIETIES, 107.

- lord of manor bound to admit three trustees on purchase of copyhold property by, 148.
- may purchase and hold land, 147.
- no transfer of property necessary on appointment of new trustees, 147.
- property of, vested in trustees, 147.
- receipt of trustees and secretary operates as reconveyance of property mortgaged to, 148, 260.
- trustees of, can give good receipt, 147.

FUTURE ESTATES. See CONTINGENT REMAINDERS; EXECUTORY INTERESTS; REMAINDERS.

GARDENS,

- cottage and market. See AGRICULTURAL HOLDINGS.

GAVELKIND, 149.

- Dower Act applies to land subject to custom of, 150.
- land in Kent presumed to be subject to custom of, 149.
- peculiarities of custom of, 149, 150.

GRANT, 151.

- corporeal hereditaments can now be conveyed by, 67, 151.
- covenants for title, when implied by word, 151.

GRANT—*continued.*

derogation from, 111.

incorporeal hereditaments conveyed by, 67, 151.

word, not necessary, 67.

GROUND RENT,

lease must be abstracted on sale of, 151.

what is, 151.

GROUND RENTS, 151.**HABENDUM,**

when consistent with grant, 67.

when not consistent with grant, 67.

HEIR-AT-LAW,

rules for determining who is, 101, 102.

HEIR, CUSTOMARY, 165.**“ HEIRS,”**

necessary before 1882 to pass estate of inheritance, 68, 137.

HIGHWAY RATE, 257.**HUSBAND AND WIFE,**

conveyances between, 65, 66.

HUSBAND, WIFE, AND THIRD PERSON,

construction of gift to, 315.

IDENTITY, 152.

of parcels, 153.

form of statutory declaration, 377.

of persons, 152, 153.

when evidence of, should be required, 68.

IDIOT. See LUNATICS.**IMPLIED CHARGE,**

of debts, 48, 355.

of legacies, 48, 356.

IMPLIED COVENANTS. See COVENANTS FOR TITLE.**IMPROVEMENT CHARGES, 176—178. See also LAND IMPROVEMENT ACTS.****INCAPACITY. See INFANTS ; LIMITATION, STATUTES OF ; LUNATICS ; MARRIED WOMEN.**

INCLOSURE,

title to land awarded depends on title of land in respect of which made, 155.

INCLOSURE ACTS, 155.

exchange under, effect of, 155.

how proved, 155.

partition under, effect of, 155, 156.

how proved, 156.

INCLOSURES, EXCHANGES, AND PARTITIONS UNDER THE INCLOSURE ACTS, 155.

INCOME,

restrictions on tying up, 249, 250.

INCUMBRANCES,

general inquiry need not be answered, 280, 363.

INDEMNITY,

form of bond of, from vendor to purchaser, 379.

INDENTURE,

person may take interest under, without being a party to, 65.

INDORSED RECEIPT, 61.

INFANTS, 157.

can dispose of gavelkind on attaining fifteen, 149, 157.

cannot make a will, 157, 349.

disabilities of, 157.

power of appointment, when exercisable by, 157.

powers of attorney by, 16.

powers under Settled Land Acts, how exercised when infant entitled, 158.

INSANITY. See LUNATICS.

INSURANCE AGAINST FIRE, 164.

vendor not bound to give purchaser benefit of policy of, 164.

INTERLINEATIONS,

in deeds, 100.

in wills, 356.

INTESTACY, 164.

copyholds, descent of, on, 165.

estates *pur autre vie*, descent of, on, 165.

evidence of, 165.

INTESTACY—*continued.*

freeholds after 1897 pass to legal personal representative on, 164, 165.

freeholds, descent of, on, 164, 165.

leaseholds pass to legal personal representative on, 165.

INTESTATES' ESTATES ACT, 1890, CHARGES UNDER, 166.

does not apply to partial intestacy, 167.

release of charge should be required by purchaser, 166.

ISSUE, 167.

meaning of word, 167.

when a word of limitation, 168.

when restricted to children, 167.

JOINT ACCOUNT CLAUSE, 224, 225.

not conclusive between mortgagees, 225.

not necessary where power to survivor to give receipts, 225.

object of, 224, 225.

unnecessary since 1882...62, 225.

where none, evidence should be required, 225, 226.

where mortgagees are trustees, not necessary, 226.

JOINT STOCK COMPANY. See COMPANIES; COMPANIES REGISTERED UNDER THE COMPANIES ACT, 1862.**JOINT TENANCY,**

definition of, 169.

difference between, and tenancy in common, 169.

how created, 169.

JOINT TENANTS, 169.

a mistake frequently made in limiting property to, 169, 170.

when deemed tenants in common in equity, 170.

JOINTURE, 171.

widow not entitled to both jointure and dower, 171.

JUDGMENTS,

conclusive proof of what they establish, 8.

do not affect lands when entered since 29th July, 1864, until delivered in execution, 172.

how now registered, 172.

registration necessary when judgment entered before 29th July, 1864...173.

of writ necessary when judgment entered between 23rd July, 1860, and 28th July, 1864...173.

JUDGMENTS—continued.

use of registration of judgments entered since 29th July, 1864...
173.

when barred by Statutes of Limitation, 173, 204.

**JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF,
172.****JUDICIAL SEPARATION,**

effect of, 174, 175.

JUDICIAL SEPARATION AND PROTECTION ORDERS, 174.**JURISDICTION, WANT OF,**

order not invalidated against a purchaser on account of, 8, 241.

LAND IMPROVEMENT ACTS, 176.

charges under Housing of the Working Classes Act, 1890...177.

Improvement of Land Act, 1864...176, 177.

Land Drainage Act, 1861...176.

Public Health Act, 1875...177.

Public Money Drainage Acts, 1846 to 1856...176.

registration of, 177, 178.

searches for, 178.

LAND TAX, 178.

evidence of redemption of, 178.

land deemed subject to, 178.

maximum amount of, 178.

one of the Queen's taxes, 258.

LAPSE, 352.**LEASE,**

agreement for lease operates in equity as lease, 179.

agreement to make, 179.

assignment of, to be by writing, 180.

assignment of, when deed necessary, 180.

assumptions to be made by purchaser on sale of, 181.

when last receipt for rent produced, 181.

assurance of, whether assignment or underlease, 180.

court may vest lease in underlessee on forfeiture of lease, 186.

described as underlease, fatal misdescription, 180, 181.

enlargement of long, 186.

for lives, right to purchaser to call for title to reversion, 192.

for term of years, purchaser can call for title to lease under which
vendor holds, but not reversion on such lease, 192.

LEASE—continued.

- for term of years, purchaser not entitled to call for title to freehold, 192.
- notice of, is notice of contents, 239.
- original, must be abstracted, 191, 276.
- powers of mortgagees and mortgagors to make, after 1881...227, 228.
before 1882..227.
- tenant for life of equity of redemption to make, after 1882...228.
- re-entry for breach of covenant for non-payment of rent, 184.
covenants other than for non-payment of rent, 184—186.
- rights of successive owners, 182—184.
- stamp on, 305, 306.
- surrender of, by operation of law, 180.
to be by writing, 180.
when deed necessary, 180.
- tenant taking possession under void, 179.
- when to be by deed, 179.
in writing, 179.

LEASE AND RELEASE,
conveyance by, 265.

LEASEHOLD PROPERTY, 179.**LEGACIES,**

- charge of, on real estate, 48.
- include annuities, 48.
- when barred by Statutes of Limitation, 204.
- when charge of, implied, 48, 356.

LEGACY DUTY, 95.

- proof of payment of, 95.

LEGAL ESTATE, 189.

- purchaser entitled to, 189.
- when mortgagee can convey, 189, 190, 225.

LEGAL PERSONAL REPRESENTATIVE. See ADMINISTRATORS;
EXECUTORS; PERSONAL REPRESENTATIVES.

LENGTH OF TITLE, 191.

- purchaser has a right to 40 years, 191.
- to advowsons, 11, 193.
- to copyholds, 192.

LENGTH OF TITLE—continued.

to leaseholds, 191.

to tithes, 193.

trustees may lend money on less than 40 years, 191.

LESSEE,

entitled to benefit of covenant with assigns, 180.

has constructive notice of lessor's title, 187.

LICENCE on sale of public-house, 253.

LIEN, 194.

affects purchasers for value unless without notice, 194.

for solicitor's costs, 195.

where solicitor discharges himself, 195.

various kinds of, 194.

whether relinquished, a question of intention, 195, 196.

LIFE ESTATE, 196.

distinguished from term of years, 196, 197.

how conveyed, 197.

tenant, powers of. *See SETTLED LAND ACTS.*

LIGHT,

inchoate right to, may be acquired before 20 years, 113.

interruption, meaning of, 113.

no disability prevents right accruing, 114.

right not acquired over Crown property, 113, 114.

right to, gained by 21 years' enjoyment, 113.

when period of prescription commences, 113.

LIMITATION, STATUTES OF, 199.

acknowledgment stops running of, 204.

Crown barred after 60 years, 199.

disabilities, 203.

do not run in favour of beneficiary against express trustee, 203.

express trustee or person claiming under
him until conveyed to purchaser for
value, 203.

express trust in case of money charged does not enlarge time
allowed by, 203.

in case of advowson, 11, 12, 204.

concealed fraud, 204.

rentcharge, 27, 204.

judgment debts, when barred by, 173, 204.

landlord, when barred by, 201.

legacies, when barred by, 204.

LIMITATION, STATUTES OF—*continued.*

persons claiming after persons under disability, when barred by, 203.

tenant in tail, when barred by, 200.

persons entitled in possession, when barred by, 199, 200.

remainder, when barred by, 200.

purchaser compelled to accept title depending on, 199.

rent, arrears of, when recoverable, 201.

tenant at will, when they begin to run in favour of, 201, 202.

from year to year, when they begin to run in favour of, 202.

in fee simple, when barred by, 199, 200.

in tail, when barred by, 200.

when *cestui que trust* barred, 203.

when mortgagee barred, 202, 260.

when mortgagor barred, 203.

LIMITATION, WORDS OF,

for estate in fee simple, 137—139.

tail, 121.

LIMITED OWNERS. *See* SETTLED LAND ACTS.

LIS PENDENS,

purchaser without notice, protected against unregistered, 8.

LIVERY OF SEISIN, 139.

LIVING. *See* ADVOWSON.

LOCKE KING'S ACTS,

provisions of, with regard to lien, 194, 195, 339, 340.

to mortgages, 228, 229.

LONG TERM,

enlargement of, 186, 187.

LORD ST. LEONARDS' ACT, 49, 50.

cases not within, 50, 51.

prudent to require consent of tenant for life on sale under, to raise charges, 52.

when, applies, 49, 50.

LOST GRANT, 112.

LOST TITLE DEEDS, 206.

See also TITLE DEEDS.

LOTS,

purchaser of several, only entitled to one abstract, 5.

LUNATICS,

- acts which judge may authorize committee to do, 160, 161.
- contracts by, 158, 159.
- conveyances by, whether void or voidable, 158, 159.
- court will not convert property of, 162.
- finer and recoveries and feoffments by, 158.
- judge in Lunacy may make vesting orders as to property of, 163.
- powers of committee of, 160, 161.
 - under Settled Land Acts, 161.
- property may be dealt with by judge in Lunacy, 159, 160, 163.
- when protector of settlement, 162.
- when trustee, new trustee may be appointed, 162.
- will of, void, 159.

MANSION HOUSE,

- principal, provisions of Settled Land Acts with regard to, 290.

MARKET GARDENS. *See* AGRICULTURAL HOLDINGS.**MARRIAGE,**

- evidence of, 39, 40.
- conditions restraining, when void, 208.

MARRIAGE, RESTRAINT ON, 208.**MARRIED WOMEN, 209.**

- copyhold estates of, how conveyed, 209.
- covenants for title by, how enforceable, 78.
- disclaimer by, 103, 210.
- disposal of estate before Married Women's Property Act, 209, 210.
- equitable interests in leaseholds, how disposed of by, 209, 210.
- equitable separate estates, how disposed of by, 211.
- estates of, at common law, how conveyed, 209, 210.
- freehold estates, how conveyed, 209.
- leasehold estates, how conveyed, 209.
- leasehold interests of, survive to husband, 210.
- mortgage debts, how disposed of by, 210.
- power of appointment exercisable by, 31.
- power to bar estate tail, 6.
 - dispose of contingent and executory interests, 210.
 - estates in lands of any tenure, 6.
 - reversionary interest in personalty, 210.
- powers of attorney by, 15.
- powers of, under Settled Land Acts, 292, 293.
 - property of, under Act of 1870...211.
 - 1882...212.

MEMORIAL,
stamp on, 306.

MERGER, 213.
does not apply to estate tail, 213.
does not apply where estates held in different rights, 213.
none at law where none in equity, 213.

MIDDLESEX,
dealings with lands in, must be registered, 262.
purchaser of lands in, with notice, cannot gain priority by prior registration, 262.

MINES,
copper, tin, iron, or lead, right of Crown with respect to, 214.
gold and silver, belong to Crown, 214.

MINES AND MINERALS, 214.
contract to sell land may be repudiated if vendor cannot make title to, 215.
effect of enfranchisement on, 215.
effect of proviso for re-entry in case of breach of covenant to allow access for inspection, 217.
lease of, can be made by tenant for life, 216, 217.
portion of rent reserved on lease of, to be set aside as capital money under Settled Land Acts, 217.
powers of trustees and mortgagees to sell apart from surface, 215.
provisions of Settled Land Acts with respect to, 216, 217.
railway and waterworks companies do not acquire, 215.
under copyhold land, lord entitled to, 214, 215.

MINORITY. *See* INFANTS.

MISDESCRIPTION,
a ground for rescission, 267.

MORTGAGE,
stamp on, 306, 307.
See also MORTGAGES.

MORTGAGED ESTATES, devolution of, upon death of mortgagee, 218.
formerly could be devised, 218.
general words in will formerly passed, 218.
in copyholds, devolution of, 219.
now vest in legal personal representatives, 219.
when legal personal representatives could convey, 218, 219.

MORTGAGEE,

power of, to grant leases, 227, 228.
when able to convey legal estate, 226.

MORTGAGES, 220.

can be effected without writing by deposit of title deeds, 128.
of copyholds, how effected, 73.
power of sale—
 ceases on payment of mortgage money, 223.
 inquiry as to money remaining owing on the security, 223.
 not given to assigns, cannot, in general, be assigned, 222.
 purchaser should be protected by, from inquiring into state of mortgage debt, 223, 224.
 should relieve purchaser from inquiring into circumstances of sale, 222, 223.
 to whom given, 221, 222.
provisions of Locke King's Act with regard to, 228, 229.
statutory power of sale—
 implied only in mortgages by deed, 220, 221.
 purchaser relieved from inquiry as to circumstances of sale, 221.
 under Conveyancing Act, 1881...221.
 under Lord Cranworth's Act, 221.
transfer *inter vivos* of security effects transfer of debt, 224.
who may exercise, 222.
 See EQUITABLE MORTGAGES; JOINT ACCOUNT CLAUSE.

MORTGAGOR,

power of, to grant leases, 227, 228.

MORTMAIN, 231, 232.

applies to corporations sole as well as aggregate, 231.
assurances which are allowed in specific cases, 232.
corporations which may invest on real security without being deemed to acquire land in, 232.
definition of land in Act of 1888...231.
 1891...231.
effect of alienation in, 231.
what corporations can hold land in, 231, 232.
 See also CHARITABLE USES.

MORTMAIN AND CHARITABLE USES, 230.

distinction between, 230, 231.

NAME,

what is compliance with condition to take, 237.

NAME AND ARMS CLAUSE, 237.

applicable to successive limitations, 237.

construed strictly, 237.

precautions to be taken on purchase of reversionary interest, 237.

when capable of being barred by disentailing assurance, 237.

NATURALIZATION,

of alien, how proved, 23.

NEXT PRESENTATION,

cannot be purchased by clergyman in order to present himself, 12.

personal property, 11.

purchase of, when simoniacal, 12.

restrictions on sale of, after 1898...12, 13.

sale of, when benefice vacant, void, 12.

NON COMPOS MENTIS. See LUNATICS.**NOTICE, 238.**

constructive, purchaser omitting to investigate title has, 239.

of deed, constructive notice of its contents, 239.

provisions of the Conveyancing Act, 1882, as to, 238, 239.

registration is not in itself, 239.

OBLITERATIONS. See ALTERATIONS.**OPINION ON TITLE, 371, 376.****OPTION, 240.**

of purchasing, binding on a purchaser with notice, 240.

must be confined within the limits allowed by rule
against perpetuities, 240.

ORDER, 240.

for foreclosure, stamp on, 307.

persons bound by, 241.

proved by office copy, 241.

sale under, how proved, 241, 242.

validity of, in favour of purchaser, 8, 241.

vesting, stamp on, 308.

ORDER FOR SALE,

equitable interests bound where persons are parties to the action,
241.

must be strictly followed, 240.

OUTLAWRY,

abolished in civil proceedings, 69.

PARCELS. *See* IDENTITY.

PARTICULARS OF SALE, 243.

cannot be varied by oral evidence, 243.

easements should be referred to in, 243.

must be fair and clear, 243.

untrue statement in, entitles purchaser to rescind, 243, 244.

PARTIES,

unnecessary for persons taking estates after 1844 to be named as,
65.

PARTITION, 245.

by the Court, 245.

Court may order sale in lieu of, 245, 246.

how it may be effected, 245.

stamp on, 308.

tenant for life may make, 245.

under Inclosure Acts, 155, 156.

voluntary, 245.

PARTNERSHIP, 246.

partnership property belongs to partners as tenants in common,
246.

legal estate devolves in usual way, 246.

PAVING EXPENSES, 310, 311.

PAYMENT INTO COURT, 247.

how proved, 247.

PEDIGREE, 247.

how proved, 247.

title depending on, 247, 248.

PEPPERCORN RENT,

last receipt for, is not evidence of compliance with covenants and
provisions of lease, 80.

PERPETUITIES, 248.

rule against, 248.

in case of contingent remainders, 248, 249.

no application to estates after estate tail, 248.

PERPETUITY,

restrictions on tying up income in, 249, 250.

PERSONAL REPRESENTATIVES,

assignment of one of several, good, 9, 135, 182.

have power to deal with personal estate even after 20 years, 9, 134.

power to convey land contracted to be sold, 9, 135.

sell and mortgage property for purpose of raising estate duty, 10, 134.

real estate vested in, under Land Transfer Act, 1897...135, 164, 165.

See also ADMINISTRATORS ; EXECUTORS.

PLANS,

copies or tracings of, should be furnished, 153.

POLICY OF FIRE INSURANCE, 164.**POLICY OF LIFE ASSURANCE, stamp on, 308.****POOR RATE, 256.****PORTIONS, 251.**

releasing, 251.

releasing under Conveyancing Act, 1881...251, 252.

POSSESSION,

form of statutory declaration as to, 377.

POSSESSORY TITLE,

objections to taking, 252.

POSSESSORY TITLES, 251.**POWER OF APPOINTMENT. *See* APPOINTMENT, POWER OF.****POWER OF SALE. *See* MORTGAGES ; SETTLED LAND ACTS ; TRUSTEES.****PRESCRIPTION,**

at common law, 112.

how rebutted, 112.

by lost grant, 112.

how rebutted, 112, 113.

lost grant, presumption of, does not apply to leaseholds, 113.

under Act of 1832, right to light, acquired by, 113, 114.

easements, other than light, acquired by, 114, 115.

profits *à prendre*, acquired by, 116.

PRESENTATION, NEXT, 11—13. *See* NEXT PRESENTATION.

PROBATE,

necessary before leaseholds of testator can be dealt with, 181, 357.
since 1898, necessary before freeholds of testator can be dealt with, 357.

PROBATE DUTY, 96.

proof of payment of, 96.

PROCLAMATIONS,

on levying fine, 142, 143.

PRODUCTION,

acknowledgment of right to, 321.
expense of, thrown on purchaser, 340.

PROFITS À PRENDRE,

acquired at common law, 112, 113.
under Prescription Act, 116.
definition and instances of, 110.
land remains subject to, in hands of purchaser, 110.
pass to purchaser of land, 110, 111.
provisions of Prescription Act bind the Crown, 116.
See also PRESCRIPTION.

PROPERTY TAX, 258.

PROTECTION ORDER,

effect of, 175.

PROTECTOR, 122.

alien cannot be, 23.
consent of, given by separate deed, must be enrolled, 120, 122, 123.

PUBLIC HEALTH ACT, 177.

See also LAND IMPROVEMENT ACTS ; STREET IMPROVEMENTS.

PUBLIC HOUSE, 253.

covenants as to purchase of beer, bind assigns, 254.
time is of essence of contract on sale of, 253.

PURCHASER,

bankruptcy of, before completion, 339.
death of, before completion, 339.

QUASI-ENTAIL, 198.

RATE,

- county, 257.
- general district, 256.
- highway, 256.
- lighting, 257.
- metropolitan gas, 258.
- poor, 256.
- private improvement, 256.
- sewers, 257.
- watch, 257.
- water, 257.

RATES AND TAXES, 255.

- what, payable under covenant to pay, 258.

RECEIPT,

- omission of indorsement of, on deed, 61.
- power to trustees to give, 333—335.
- stamp on, 308.

RECEIPT CLAUSE, 61.**RECEIVING ORDER,**

- effect of, 34.

RECITALS,

- not needing proof, 66.
- when facts recited to be proved, 66.

RECONVEYANCE, 259.

- entry of satisfaction when the mortgagee has not been admitted to copyholds, 260.
- mortgagor's right to transfer in lieu of, 261.
- not necessary in case of mortgage to building society, 43, 44, 260.
 - friendly society, 148, 260.
 - where mortgagee has not legal estate, 259, 260.
 - where no actual surrender of copyholds, 260.
- stamp on, 309.
- unnecessary after 13 years' possession of mortgagor, 202, 260.
- who can call for, 261.

RECOVERY,

- could be suffered with concurrence of lessee for life, 142.
- could originally only be suffered by person seised, 142.
- recovery deed proper evidence of, 143.

RECOVERY DEED, 143.

REDEMPTION,

agreement clogging, not allowed, 228.

RE-ENTRY, proviso for. *See* **LEASE.**

REGISTRATION,

lands registered under Land Transfer Acts do not require, 264.
not of itself notice, 239.

REGISTRATION OF DEEDS AND WILLS, 262.

in Middlesex, 262.

in Yorkshire, 263.

in Bedford Level, 264.

rules as to purchaser with notice in Middlesex, 262.

Yorkshire, 263.

REGISTRATION OF WILL,

assurance from devisee may have priority without, 264.

RELEASE, 265.

recital of lease in, when conclusive evidence, 265.

stamp on, 309.

statutory, introduced by Act of 1841...265, 266.

where used, 265.

REMAINDERS,

vested, when liable to fail, 64.

REMOTENESS OF LIMITATION. *See* **PERPETUITIES.**

RENT,

apportionment of, 32, 33.

when barred by Statutes of Limitation, 201.

RENTCHARGE, 24.

additional remedies for, 25.

definition of, 24.

how determined, 25, 26.

how far search protects purchaser from, 27.

liability of subsequent owners for, 25.

part of property may be released from, 26, 33.

statutory power for recovery of, 24, 25.

of distress for, 24.

when barred by Statutes of Limitation, 27, 204.

when must be registered, 27.

See also **ANNUITY.**

RENTS AND PROFITS,

person entitled to the receipt of, is in possession within the meaning of the Settled Land Acts, 282.

REPRESENTATIVES. *See* ADMINISTRATORS; EXECUTORS; PERSONAL REPRESENTATIVES.

RE-PURCHASE,

option to, 240.

REQUISITIONS,

answers to, 374.

common form and miscellaneous, 361—363.

further, on specimen abstract, 376.

list of usual subjects for, common to various kinds of property, 3.

on specimen abstract, 371—373.

peculiar to copyholds, 4.

freeholds, 3.

leaseholds, 4.

reversionary interests, 4.

sales under Settled Land Acts, 4.

time for, when abstract incomplete, 57.

not delivered punctually, 57.

See Separate Index to REQUISITIONS, 393—409.

RESCISSION, 267.

construction of usual condition for, 267, 268.

misrepresentation a ground for, 267.

RESIDUARY DEVISE,

since the Wills Act includes lapsed and void devises, 352, 353.

RESTRAINT AGAINST ANTICIPATION, 29.

See also ANTICIPATION, RESTRAINT AGAINST.

RESTRAINT ON ALIENATION, 21.

See also ALIENATION.

RESTRAINT ON MARRIAGE, 208.**RESTRICTIONS AS TO USER OF LAND, 269.**

by covenant, 269.

how right lost, 27.

in case of common building schemes, 269, 270.

in cases other than leases, 269.

must be disclosed in particulars, 81, 82, 271.

RESTRICTIONS AS TO USER OF LAND—continued.

on assignment of lease of public-house as to purchase of beer,
on whom binding, 254.

who can enforce, 269.

See also COVENANTS.

RESULTING USE, 337, 338.

REVERSIONARY INTERESTS, 272.

distringas should be obtained when purchasing, 272.

inquiries to be made on purchase or loan on security of, 272.

notice in writing of an assignment of, must be given to all the
trustees, 272.

purchaser of, should ascertain whether legacy duty has been paid,
272.

sale of, not now liable to be set aside merely on the ground of
undervalue, 137.

stop orders should be obtained on funds in court on purchase of,
272.

title must disclose creation of, 272.

REVOCATION OF WILL,

how effected, 350, 351.

RIGHT OF WAY. *See* WAY, RIGHT OF.

ROADS,

making up of, charge on premises, 310.

for, need not be registered, 311.

ROOT OF TITLE, 274.

in case of copyholds, 276.

freeholds, best, 275.

unsatisfactory, 275.

leaseholds, 276.

provisions as to documents prior to, 274.

SALE BY THE COURT,

validity of, in favour of purchaser, 8, 241.

SATISFIED TERMS,

satisfied after 1845, extinguished, 317.

on 31st December, 1845, extinguished, 317.

to what extent title of, should be deduced, 318.

SEAL,

essential to validity of deed, 100.

SEARCHES, 277.

- against married women, 279.
- in case of settled land, 278.
- official, 279, 280.
- on mortgage, 278.
 - purchase from owner in fee, 277.
 - trustee or mortgagee, 277.
 - of agricultural land, 279.
 - copyholds, 279.
 - leaseholds, 278.
- reconveyance, 278.
- sale subject to mortgage, 278.
- transfer of mortgage, 278.
- where mortgagor joins in sale, 278.

SEISIN, 281.

- does not apply to leaseholds, 281.
- how proved, 281.

SEPARATE ESTATE. *See* **MARRIED WOMEN.**

SEPARATION, JUDICIAL, 174, 175.

SETTLED ESTATES ACT,

- differences between, and Settled Land Acts, 282.
- land belonging to an infant in fee is settled within the meaning of, 296.
- leases under, 294, 295.
 - which may be authorized by the court, 295.
- provisions of, with regard to married women and other persons under disability, 296.
- sales under, 294.

SETTLED LAND, 281.**SETTLED LAND ACTS,**

- capital money to be paid to trustee or into court, 291.
- differences between, and Settled Estates Act, 282.
- general effect of, 283.
- leases which can be made by tenant for life, 285.
 - without notice to trustees, 288.
- mansion-house, principal, provisions of, with regard to, 290.
- notices to be given to trustees, 292.
- power of court to appoint trustees, 290.
 - tenant for life to sell, 284, 285.

SETTLED LAND ACTS—*continued.*

- power of tenant for life to enfranchise, 284, 285.
 - exchange, 284, 285.
 - lease, 285.
 - mortgage, 288, 289.
 - partition, 284, 285.
 - shift incumbrance, 289.
- powers, how exercised, when infant tenant for life, 292.
 - lunatic tenant for life, 293.
 - married woman tenant for life, 292, 293.
 - where there is trust for sale, 293.
- of trustees if dealing with tenant for life, 294.
- provisions with regard to building leases, 286, 287.
 - leases, 285.
 - mining leases, 216, 217, 287, 288.
- purchasers and mortgagees not concerned to see to application of purchase or mortgage money, 291, 292.
- who are trustees for purposes of, 289, 290.
- who is tenant for life under, 282, 283.

SETTLEMENT,

- of infant under Infant Settlements Act, 300.
 - voidable, not void, 300.
- stamp on, 309.

SETTLEMENT ESTATE DUTY, 93.

- exemptions from, 93, 94.
- proof of payment of, 95.
- when payable, 93.
 - out of residuary estate, 94.
- See also* ESTATE DUTY.

SETTLEMENTS, 297.

- void against creditors, 297.
 - purchaser, 297, 298.
 - trustee in bankruptcy, 34, 35, 299.

SEWERING expenses, 310, 311.

SHELLEY'S CASE,

- rule in, 138.

SIGNATURE,

- whether necessary to deed, 100.

SIMONY,

offence of, 12.

SPECIFIC BEQUEST,

assent of legal personal representative to, 52, 53.

SPECIFIC DEVISE,

assent of legal personal representative to, 52, 53.

SPECIFIC PERFORMANCE,

may be decreed when vendor is tenant in tail, 125.

SPES SUCCESSIONIS, 301.

can be assigned in equity, 301.

cannot be assigned at law, 301.

not an estate or interest, 302.

STAMPS, 302.

conditions precluding objections to insufficiently stamped document dated on or after 16th May, 1888, void, 302, 303.

purchaser has right to have the documents of title properly stamped at vendor's expense, 302.

See also under various Headings.

STATUTES OF LIMITATION. See LIMITATION, STATUTES OF.**STATUTORY CHARGES, 176—178.**

must appear on abstract, 280.

See also LAND IMPROVEMENT ACTS.

STATUTORY DECLARATION,

as to identity of parcels and possession, 377.

STOP ORDER, 105.

effect of, 105.

how obtained, 105.

necessary to gain priority where fund in court, 105.

STREET IMPROVEMENTS, 310.

charge in respect of, 310.

need not be registered, 311.

SUCCESSION DUTY, 86.

bonâ fide purchaser without notice protected, 87, 88.

exemptions from, 88, 89.

extinction of charge is deemed to confer succession, 87.

fraudulent dispositions liable to, 87.

inchoate claims to, should be provided for, 88.

meaning of terms "succession," "predecessor," "successor," 86.

SUCCESSION DUTY—*continued*.

- not payable by purchaser for value after 12 years, 88.
- on death of one of several joint tenants, 86, 87.
- on exercise of general power of appointment, 87.
 - special power of appointment, 87.
- overriding trusts and powers free land from, 90.
- payment of legacy duty exempts from payment of, 89, 90.
- power of Commissioners to commute, 87.
- production of Commissioners' certificate should be required, 89.
- proof of payment of, 89.
- when payable, 86.

SUPERFLUOUS LANDS, 311.

- provisions of Lands Clauses Consolidation Act with respect to sale of, 311, 312.
- right of pre-emption of adjoining owners, 312, 313.

SURRENDER OF COPYHOLDS, 72.

SURRENDER OF LEASE,

- by operation of law need not be in writing, 180.
- when deed required, 180.
- when writing required, 180.

TACKING OF MORTGAGES, 313.

- abolished in Yorkshire, 264, 314.
- temporarily abolished, 314.
- when it applies, 313, 314.

TAIL, ESTATE,

- words necessary to create, in deed, 121.
- will, 121.

See also ENTAIL.

TAXES,

- inhabited house duty, 258.
- land tax, 178, 258.
- property tax, Schedule A., 258.
- B., 258.
- Queen's, what are, 258.

TENANCY AT WILL,

- when Statutes of Limitation begin to run in case of, 201, 202.

TENANCY FOR LIFE. *See* LIFE ESTATE; SETTLED LAND ACTS.

TENANCY FROM YEAR TO YEAR,

- notice required to determine in case of agricultural holdings, 19.

TENANCY IN COMMON,

- distinction between, and joint tenancy, 316.
- none at law of chose in action, 317.
- words which will create, 316.

TENANT FOR LIFE, 196, 197.

- who is, under Settled Land Acts, 282, 283.
- See also* SETTLED LAND ACTS.

TENANT FOR YEARS. *See* LEASE.**TENANT IN TAIL. *See* ENTAIL.****TENANTS BY ENTIRETIES, 315.**

- become joint tenants on dissolution of marriage, 315.
- when husband and wife are, 315.

TENANTS IN COMMON, 316.

- no survivorship between, 316.

TENANTS, JOINT, 169, 170.**TENENDUM, 67, 68.****TERM,**

- long, enlargement of, 186, 187.

TERMS, ATTENDANT AND SATISFIED, 317. *See also* SATISFIED TERMS.**THELLUSSON ACT, 249, 250.****TITHE RENTCHARGE, 319.**

- all land deemed subject to, 319.
- proof of freedom from, 319.
- statutory provisions for apportionment of, 319, 320.
- vendor not bound to apportion, 319.

TITHES,

- title to be shown on sale of, 193.

TITLE,

- analysis and notes on, 370.
- concealing instrument material to, a misdemeanour, 27.
- depending on Statutes of Limitation, forced on purchaser, 199.
- objections going to root of, are not precluded by ordinary condition, 57.
- purchaser's *prima facie* right to good, how rebutted, 58.
- when there is vital defect in, specific performance refused notwithstanding conditions, 58, 59.

TITLE DEEDS,

- acknowledgment of right to production of, 321, 340.
- effect of loss of, 206.
- evidence which should be required when lost, 206, 207.
- loss of, need not be fatal objection to title, 206.
- precautions to be taken when lost, 206, 207.
- undertaking for safe custody of, 321, 340.
- when vendor may retain, 321.
- which must be handed over, 320.

TITLE DEEDS AND THEIR CUSTODY, 320.

TITLE, WANT OF, 323.

- contract can be rescinded on account of vendor's, 323.

TOMBSTONES,

- inscriptions on, how far evidence, 40.

TRAITORS, 69.

TRANSFER OF MORTGAGE,

- stamp on, 309.

TREASON,

- attainder of, effect of, on property, 69.

TRUST,

- when it should be kept off title, 127.

TRUST ESTATES, devolution of, upon death of trustee, 324.

- where there are two or more trustees, 324.
 - is a sole trustee, devolution of copyhold estates, 325, 326.
 - freehold estates, 324, 325.
 - leasehold estates, 326.

TRUST PROPERTY,

- may in general be vested by declaration, 328, 343.
- which cannot be vested by declaration, 329, 343.

TRUSTEES,

- cannot sell at gross undervalue, 334.
- consent of tenant for life not necessary in case of settlement within sect. 63 of the Settled Land Act, 1882...293, 330, 331.
- different trustees may be appointed for different parts of trust property, 328.
- for purposes of Settled Land Acts, who are, 289, 290.
- for sale, must carry out instructions of instrument, 334.

TRUSTEES—continued.

may sell settled land to tenant for life, 293.

where tenant for life infant, 292.

new, could, before Lord Cranworth's Act, only be appointed under express power or by the court, 327.

power of court to appoint new, 329.

make vesting order, 329.

to sell under Lord St. Leonards' Act, when land charged with debts and legacies, 49, 50, 333.

powers of attorney by, 15.

to give receipts, 333—335.

purchaser from, cannot be compelled to accept conveyance from tenant for life under Settled Land Acts, 332.

receipt of, good discharge under Settled Land Acts, 291.

statutory power of appointing new, 327, 328.

whether they take legal estate under devise, 354, 355.

who have purchased in breach of trust, can sell, 331.

will not be discharged unless two trustees left to perform trust, 327.

TRUSTEES, SALES AND MORTGAGES BY, 327.

effect of depreciatory conditions, 332, 333.

UNCONSCIONABLE BARGAIN, 137.**UNDERLEASE,**

assumptions to be made by purchaser on sale of, 181.

when last receipt for rent produced, 181.

UNDERTAKING FOR SAFE CUSTODY, 321.

expense of, thrown on purchaser, 340.

UNDERVALUE,

sale of reversionary interest at, 137.

UNDIVIDED SHARE,

tenant for life of, may concur in making partition of the entirety, 284.

UNSOUNDNESS OF MIND. See LUNATICS.**USES, 336.**

before Statute of Uses, 336.

declared in a will, become legal estates, 338.

resulting, where no consideration, 337, 338.

Statute of, does not apply to copyholds or leaseholds, 337.

only applies where one person stands seised to use of another, 337.

turned into legal estates, 336.

VENDOR,

bankruptcy of, before completion, 338, 339.
death of, before completion, 339.

VENDOR AND PURCHASER, bankruptcy and death of, before completion, 339.

VERIFICATION OF ABSTRACT, 340.

expense of, thrown on purchaser, 340, 341.

VEST,

various meanings of term, 341.

VESTING, 341.

VESTING DECLARATIONS,

as to copyholds and mortgaged lands, 329, 343.
in deeds appointing new trustees, 328, 343.

VESTING DECLARATIONS AND ORDERS, 343.

VESTING ORDERS,

as to copyholds, 345.
court can appoint persons to convey in lieu of making, 345.
not necessary or proper in case of equitable interests, 346.
when the court can make, 343—345.

VOLUNTARY SETTLEMENT, 34, 35, 297—299.

WAIVER,

by acceptance of rent, 80, 181.
none by acceptance of rent due before breach of covenant, 181.

WATER RATE, 257.

WATERCOURSE, or use of water,

how acquired at common law, 112, 113.
Prescription Act, provisions as to, bind the Crown, 115.
under Prescription Act, 114, 115.

WAY, RIGHT OF,

how acquired at common law, 112, 113.
Prescription Act, provisions as to, bind the Crown, 115.
under Prescription Act, 114, 115.

WIFE. See MARRIED WOMEN.

WILL,

after 1837, speaks from death of testator, 351.
after-acquired realty could not, before 1837, be disposed of by, 353.
aliens can make, 350.

WILL—continued.

- attestation of, required, 348.
- charge of debts by, how effected, 48, 355.
- charge of legacies by, how effected, 48, 356.
- contingent and other future interests can be disposed of by, 351.
- copyholds included in general devise, 351, 352.
- estate taken prior to Wills Act, 354.
- general bequest always included lapsed and void bequests, 353.
- general devise now includes lapsed and void devises, 352, 353.
 - or bequest executes general power, 351.
- gifts to attesting witnesses, void, 352.
- how revoked since Wills Act, 350, 351.
- infant cannot make, 157, 349.
- lands contracted to be purchased included in general devise, 352.
- leaseholds included in general devise of lands, 352.
- no lapse where devisee is given estate tail, 352.
- no lapse where gift is to children who leave issue who survive testator, 352.
- no words of limitation now necessary to pass fee simple, 353.
- obliterations and interlineations, 356.
- of immovables, governed by *lex situs*, 347.
- of leaseholds and other personalty, must be proved, 357.
- of movables, governed by *lex domicilii*, 347.
- of personalty made by British subjects, 347, 348.
- of realty after 1897 must be proved, 357.
 - before 1898 required no proof, 357.
 - not proved should be produced, 357.
- of sailor at sea, 348.
- of soldier in actual military service, 348.
- person of unsound mind cannot make, 350.
- power of married woman to make after 1882...349, 350.
 - before 1883...349.
- probate in common form may be used as evidence after notice, 357.
 - usually accepted as proof, 357.
- probate in solemn form conclusive proof, 357.
- provisions of Married Women's Property Act, 1893...350.
- purchase-money of lands contracted to be sold not included in general devise, 352.
- requirements for validity of, 348.
- requisites for validity of will of real estate before Wills Act, 348.
- reversionary interests in land included in general devise, 352.
- rule before 1837 with regard to after-acquired leaseholds, 353.
- statement of testator admissible to show what papers constitute will, 356.

WILL—continued.

- traitors, felons, convicts, and suicides under no incapacity, 350.
- uses in, 338.
- what property could be disposed of by, before Wills Act, 348, 353.
- when legal estate taken by trustees before Wills Act, 354.
 - since Wills Act, 354, 355.
- when made during coverture, formerly revoked by its termination, 349, 350.

WILLS, 347.

- division of subject, 347.

WORDS OF LIMITATION,

- to pass estate in fee simple, 137—139.
- tail, 121.

WRITS AND ORDERS AFFECTING LAND,

- registration of, at central office, 172.
- at land registry office, 173, 174.

YEARLY TENANCY,

- notice required to determine, in case of agricultural holdings, 19.

YORKSHIRE, REGISTRATION IN, 263.

- all priorities have full effect except in cases of actual fraud, 263.
- notice of will may be registered in registry, 263.

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